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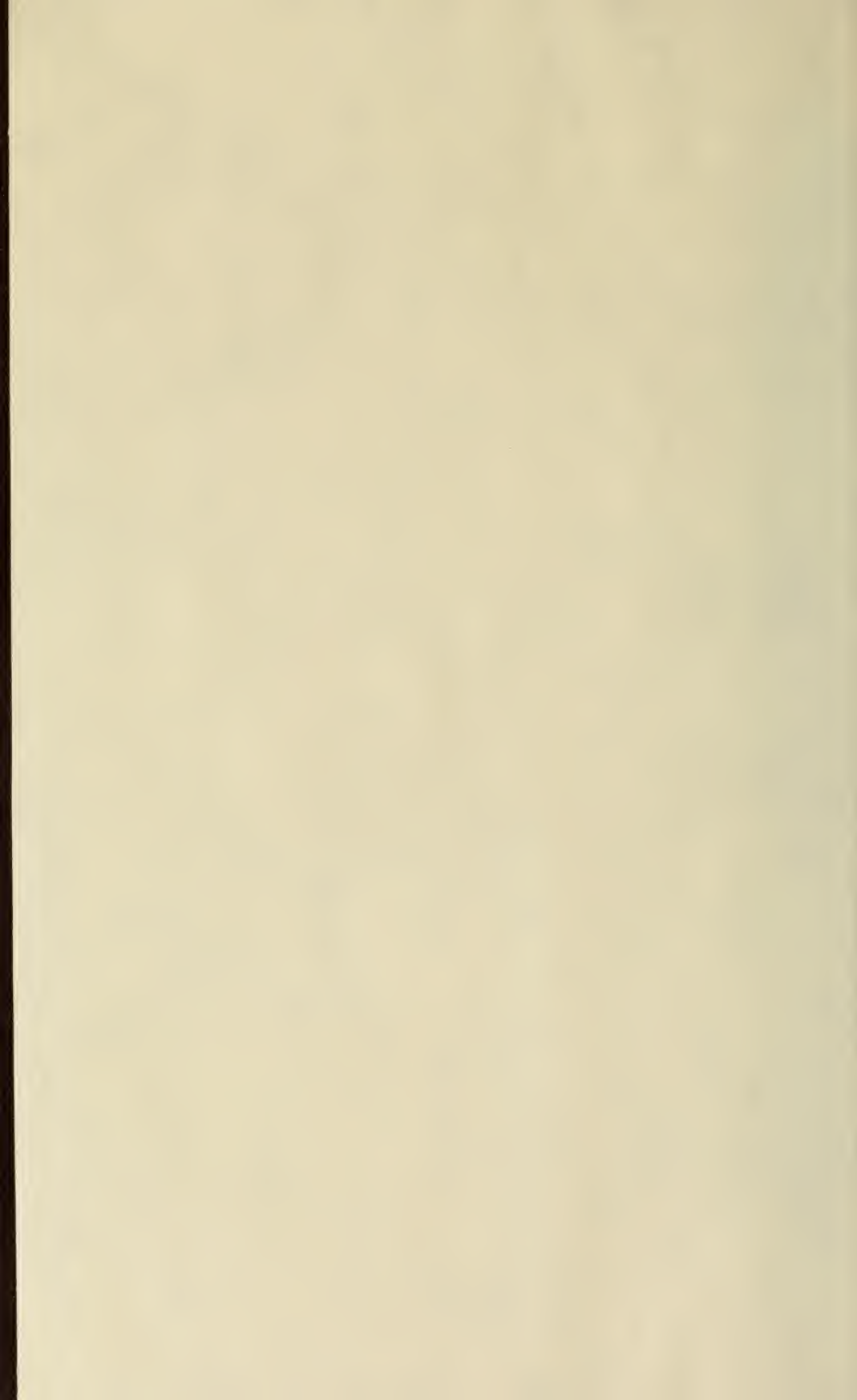
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Investigation of the New York City



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**AN INVESTIGATION OF
THE NEW YORK CITY
SCHOOL CONSTRUCTION PROGRAM**

**A REPORT BY THE
NEW YORK STATE *TEMPORARY*
COMMISSION OF INVESTIGATION**

JANUARY 1962



THE TEMPORARY COMMISSION OF INVESTIGATION
OF THE STATE OF NEW YORK

Commissioners

JACOB GRUMET

JOHN W. RYAN, JR.

MYLES J. LANE

GOODMAN A. SARACHAN

NATHAN SKOLNIK

CARL A. VERGARI

Deputy Commissioner

Chief Counsel

Assistant Counsel

JOSEPH FISCH

JOSHUA OKUN

JAMES V. HALLISEY*

JOSEPH N. TAUBER*

ELLIOTT L. HOFFMAN*

ARNOLD M. WEISS

WARREN E. DOWNING

Executive Assistant

JOSEPH D. MILENKY

ALBERT SOHN

Chief Investigator

Chief Accountant

Commission Offices

270 Broadway
New York 7, N. Y.

State Office Building
Buffalo, New York

* Resigned



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TITLE I

THE INVESTIGATION

I. Introduction

The school construction program in the City of New York is one of major importance, and has ranked as either the first or second largest single item in the capital budget of the City of New York since 1952. At the end of World War II, New York City found itself faced with the problem shared by municipalities throughout this country. A new and large crop of youngsters were ready to start their education, but for a number of years there had been no school construction at all. In New York City the problem was even more acute, for not only did it face an increased student population, but it was in the throes of major population shifts.

The decade of the 1950's was one of the most significant eras of school construction in the history of this City. Unfortunately, although the student population did level off and remain relatively constant during this period, population shifts have been so vast and so sudden that there are almost as many children on split session today as there were ten years ago, despite the net addition of some 254,265 classroom seats in this period. Even in those schools without split sessions, an abnormally high percentage of students are receiving their education in classes where the enrollment is considered beyond the proper limits for sound education. The New York City classroom is the most overcrowded in the entire United States.*

It is quite apparent that the school construction program will continue to be a vast one, and even greater expenditures have been requested for the years ahead. In its 1962 budget request, the Board of Education has projected an expenditure of over 800 million dollars

* Statistical Abstract of the United States (1960) p. 115; The University of the State of New York, *The State Education Department, Division of Research, An Estimate of School Building Needs in New York State Through The Years 1964-1965* (1960) p. 16, 17.

SCHEDULE 1

NEW YORK CITY PUBLIC SCHOOL CONSTRUCTION: DECADE OF THE 1950's

Year	Schools Completed*	Appropriation For Construction**	Student Enrollment	Classroom Seats Added	Pupils On Short Time As of 10/31***	Pupils On Special Schedule As of 10/31****	Total Pupils On Short Time And Special Schedule
1950	13	\$ 22,820,629	879,315	11,672	65,953	59,364	125,317
1951	16	54,203,984	881,092	16,786	62,190	60,672	122,862
1952	19	44,496,861	910,933	18,479	63,752	73,713	137,465
1953	31	45,137,482	911,878	29,990	78,177	65,450	143,627
1954	20	47,928,654	907,030	21,153	75,628	52,353	127,981
1955	26	80,381,148	914,281	29,097	67,816	61,184	129,000
1956	18	77,880,400	927,998	26,125	64,971	68,924	133,895
1957	17	45,027,434	950,237	20,829	83,937	84,658	168,595
1958	37	52,403,534	967,957	49,588	80,348	95,114	175,462
1959	18	41,052,481	977,541	30,546	63,806	101,082	164,888
	218	\$511,332,607		254,265			

* Includes new buildings and additions.

** Contracts let.

*** Pupils on short time receive less instruction than is ordinarily required by State Law.

**** Pupils who generally attend school before 8:30 a.m. or after 3:30 p.m.

for the next six years. Clearly then, the significance of this Commission's study is not of purely historical interest.

"It is imperative for economy in the already overburdened government of the City and for the health, safety and proper education of New York's children that the future construction programs be administered effectively and efficiently, under competent leadership, in a climate free from political interference and corrupt practices."*

The Commission believes that the facts disclosed in its investigation and public hearing and the recommendations contained in this report should contribute materially to the future success of this program.

II. History of the Investigation

A. Prior Studies

In the latter part of 1958 considerable public controversy arose as a result of charges made by the Comptroller of the City of New York, Lawrence E. Gerosa, concerning allegedly great waste and extravagance in the school construction program of the City of New York.** Long before the outspoken criticism by the Comptroller, the fact that all was not well with the administration of school construction was made known to the City authorities.

Within the past decade there were three major studies which included the problem of the school construction program. The first study was prepared by the Mayor's*** Committee on Management Survey in New York City.**** Published in 1951 it was a thirteen-month study by a staff under the direction of George D. Strayer***** and Louis E. Yavner.*****

* Closing Statement made by Commissioner Goodman A. Sarachan, New York State Commission of Investigation on June 29th, 1961 at the public hearing, reproduced in full at pp. 187-190.

** These charges were made in the form of reports issued on November 18, 1958 and February 10, 1959.

*** Vincent R. Impelliteri was Mayor at this time.

**** Mayor's Committee on Management Survey, *Report of Survey of Board of Education and Board of Higher Education, The Administrative Management of the School System of New York City*, (1951), hereafter referred to as Strayer-Yavner Report.

***** Mr. Strayer was a professor of Educational Administration at Columbia University.

***** Mr. Yavner has been a New York City Commissioner of Investigation, Special Counsel to a U.S. Senate Committee investigating Organized Crime, and a Deputy President of the City Council of New York City.

The second and third studies were made in response to Comptroller Gerosa's charges. To study these charges the Board of Education, with the approval of Mayor Robert F. Wagner, on June 20, 1958 requested the Office of the City Administrator to undertake "a full and searching examination of school planning, construction and financing."* The first of the reports filed by the City Administrator, Charles F. Preusse, was submitted on February 10, 1959. He reported that "In the course of this study nearly 100 schools were surveyed. Principals, teachers, and custodians were interviewed."**

On November 24, 1958 the Board of Education also requested the State Commissioner of Education "to assume responsibility for an examination of the facts." To this end, on December 5, 1958 the State Education Commissioner appointed a three-man committee, headed by Henry T. Heald,*** President of the Ford Foundation. Its report was filed on May 15, 1959.****

The Strayer-Yavner Report is an extensive study and reflects keen insight into the basic day by day workings of the Board of Education. Much basic field work is in evidence. Its findings and conclusions about the poor quality of school construction and inspection are remarkably similar to those of this Commission. The Heald***** and Preusse Reports***** contained somewhat different views in the area of school construction.

Although the Preusse and Heald Reports did not find the same conditions in school construction as were disclosed by this Commission's investigation, the Board of Education cannot be excused for its neglect to personally look to conditions in its own house,

* Report of the City Administrator, Board of Education: *Organization and Management of School Planning and Construction* (1959) p. 1, hereafter referred to as Preusse Report.

** Preusse Report p. 9.

*** Other members were Max Rubin, Attorney, and Harold C. Hunt of the Graduate School of Education, Harvard University.

**** The University of the State of New York, State Education Department Albany, *School Construction in New York City; The Report of the State Education Commissioner's Committee on Inquiry into Charges of Waste and Extravagance in the Construction of School Buildings in New York City*, May 1959, hereafter referred to as Heald Report.

***** Heald Report p. 39.

***** Preusse Report p. 6.

even in the absence of any accusations.* To fail to do so in the face of serious charges made earlier, particularly in the Strayer-Yavner Report, is wanton disregard of duty. The fact is that the Board of Education did not make any significant effort at self-correction until early 1961, when it became clear that this Commission's investigation was exposing the damaging effects of years of bad administration and corrupt practices.

Included in the appendix hereto** is a detailed comparison of the above-mentioned three reports as they pertain to school construction. For present purposes, several brief observations thereon will suffice.

The Strayer-Yavner Report*** noted that hazards and waste were caused by poor planning and design as well as inadequate inspection. Poor coordination and organization were found to be all too prevalent, and although complaints were made on every level from school clerks to school principals, corrective action during the warranty period**** was rarely forthcoming. Although sound recommendations were made to correct this problem they were never implemented. The Preusse and Heald Reports also made worthwhile recommendations pertaining to the warranty period, but these suffered the same fate as those made eight years earlier.

The Strayer-Yavner Report stressed the difficulties encountered with "change orders," the term used to describe deviations from original plans and specifications. Here too, detailed suggestions for dealing with the problem were not heeded, and the situation became so acute in 1956 that the Board of Education spent over \$300,000.00 in fees for outside consulting services during the next few years to alleviate the unusual backlog of change orders.

The Preusse Report concentrated on the organization and administrative management of school planning and construction. It found a "tremendous diffusion of responsibility," but felt that the system rather than the administrators was at fault. The Strayer-Yavner, Heald and Preusse Reports all agreed that the Board Members were excessively involved in routine administrative matters

* As will be demonstrated later the Board's own representatives had called to its attention many of these conditions on innumerable occasions prior to 1959.

** See Appendix A.

*** This report was by no means confined to school construction, but only that part is being treated in this report.

**** See Section IV B *infra* for a full discussion.

which were more properly in the domain of the Superintendent of Schools.*

The Preusse Report found that the procedural labyrinth within the Board, together with its complicated relationship with other City agencies, both delayed school construction and made it impossible to assign responsibility for decisions. To eliminate these conditions, the Preusse Report recommended that an Office of School Buildings be established to incorporate the functions then performed by the Bureau of Construction and the Bureau of Plant Operation and Maintenance. In effect it was urged that the construction and remodeling function of the former and the repair and maintenance function of the latter be combined under a single command. The Preusse Report suggested that the head be given the rank of Deputy Superintendent of Schools, and that he be responsible only to the Superintendent of Schools. The report emphasized that the new post would require great administrative skills. The greatest part of this particular recommendation was followed, but as this Commission's public hearing revealed, the Deputy Superintendent chosen for the new post was scarcely equal to the assignment.

Both the Preusse and Heald Reports recommended that experimentally, at least, architects be held responsible for supervision of construction, as in the case of private industry. It was hoped that this might be the partial answer to the problem of inadequate supervision of construction by Board employees.

Neither the Preusse or Heald Reports found the original Gerosa charges substantiated even in small part as to dollar amount,** although they found some merit in individual areas of his criticism.

* In an address before the Annual Conference Luncheon of the United Parents Association in New York City on January 9, 1960, Dr. Heald referred to his Committee's work when he stated:

"The New York City schools have become bogged down in such a morass of administrative procedures that it is almost impossible to pinpoint the locus of responsibility. Red tape strangles the school personnel in mountains of paperwork, and individual initiative, which is a quality all too rare and not sufficiently cherished and rewarded when it does express itself, is submerged by a ponderous chain of command. Buck-passing has become a fixture of administrative practice.

"It is the challenge to administration that the system be capable of wise and speedy decisions, that red tape be cut, and that new and imaginative ideas find a path to fulfillment.

"But no matter how many capable and well-meaning people teach in the classrooms and serve as administrators, they can have little effect unless the millstones of administrative inefficiency, political manipulation, and official timidity are removed from the school system. . . ."

** Gerosa had claimed that taxpayers were "being charged 20% more than they should because of improper planning by the Board of Education in the school construction." News Release, Office of the Comptroller of the City of New York, November 18, 1958, p. 1.

The Preusse Report suggested that the problem of inadequate coordination among the various contractors could be remedied by lodging in the general contractor responsibility for all construction.* The Board of Education has not followed this suggestion or a number of others even on a trial basis. Lack of experimentation has long marked the thinking of the Board in the area of school construction. One would like to think that educators are in the vanguard of new thoughts and concepts. Certainly, the New York City Board of Education provides an ideal setting for some experimentation as it has such a tremendous building program, year after year. It would not be necessary to abandon common methods and procedures. Experimentation could be made in individual schools, and the results carefully observed. Unfortunately, the Board of Education's flexibility in providing excuses for grievous conditions has never been matched by equal flexibility in providing new techniques and procedures to overcome these conditions.

B. Commission Undertakes Investigation

During late 1958 the Commission decided to conduct a general exploration of the school construction program with a small pilot group. This preliminary inquiry continued for many months. In September 1960, upon the completion of other pending matters, a full-scale investigation was undertaken on a number of fronts.

Foremost among the Commission's inquiries was that pertaining to the quality and utility of recently completed schools. In only a few instances did Commission investigators concern themselves with schools built earlier than 1955. The schools to be studied were chosen at random, and covered all five boroughs. It should be stressed that these schools were built a decade or more after the first post-war construction was undertaken. While there has long been a need for additional student seating space, these schools were not built with any sense of urgency or unusual compelling necessity. It was the Commission's desire to examine school construction which was both ordinary and routine.

The physical inspection was first made by Special Agents of this Commission. Thereafter, disclosure of defects was made largely by employees of the Board of Education working in these schools. One source of information was the custodian, the individual responsible for the daily operation of the physical plant which comprises a school.

* Under the present system, there are three other prime contractors, each of whom is completely independent of the other. The other prime contractors are: Heating and Ventilating, Electrical, Plumbing and Drainage.

The punch list,* custodian's daily log books, and copies of correspondence proved to be excellent reference sources. As might be expected, the agents encountered a wide variety of response on the part of custodians and other school employees. Initially, the most common reaction to the agents' inquiries was suspicion and distrust. Fortunately, a substantial number of the Board employees were soon convinced of the sincerity and objectives of the inquiry. Once they sensed that the State Investigation Commission might be of assistance in curing conditions which had long gone uncorrected and unheeded despite numerous complaints, the measure of cooperation increased. Regrettably, it was apparent that a few employees never felt free to extend more than token cooperation, because they feared some type of retaliation from their superiors.

The study revealed that there was scarcely a school without significant defects in both design or construction. Viewed alone, many of the individual problems might have been expected, but the variety and multitude of problems were appalling. They certainly did not justify the pride expressed by the Board of Education in the quality of material used in school construction, and the professional reputation enjoyed by the architects and contractors who designed and built the schools.

More shocking than the discovery of the many deficiencies was the revelation that in many instances Board of Education inspectional personnel had approved faulty and defective construction. Until very recently, defects which were the responsibility of the private architect or contractor went either uncorrected, or when corrected, the costs were usually paid for by the City of New York. Failure properly to protect the interests of the City of New York has impaired the utility of many of the new structures. It has also cost the City a substantial sum of money. To attempt to estimate this dollar cost would require the long-term services of architects and engineers. This Commission did hire a firm of skilled engineers, but time and budget considerations limited their examination in depth to just one school, with specific points of inquiry in several others.

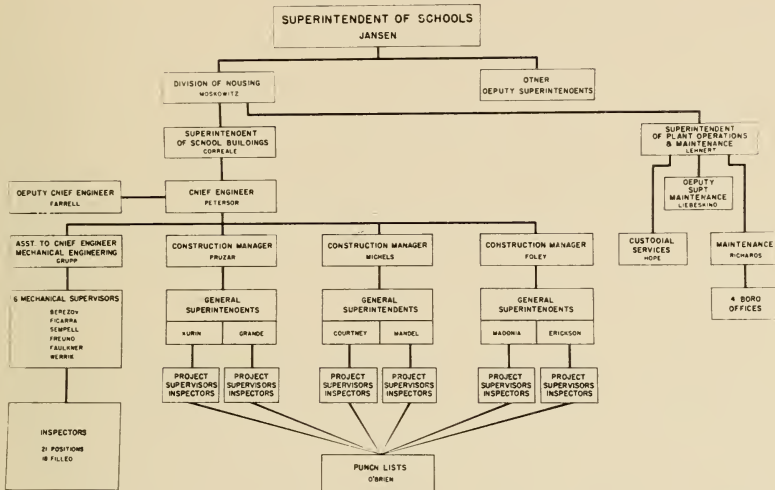
Before proceeding further, reference should be made to the organizational structure of the Board of Education as it pertains to school construction. Schedule 2 reflects the pre-September 1, 1959 structure and Schedule 3 the current one.** While the inspectional level

* The list prepared various times during the construction process, indicating those items which require correction or completion. It is explained in detail at p. 25 *infra*.

** Unless otherwise designated, all temporal references relate to conditions or situations in existence at the time of the public hearing.

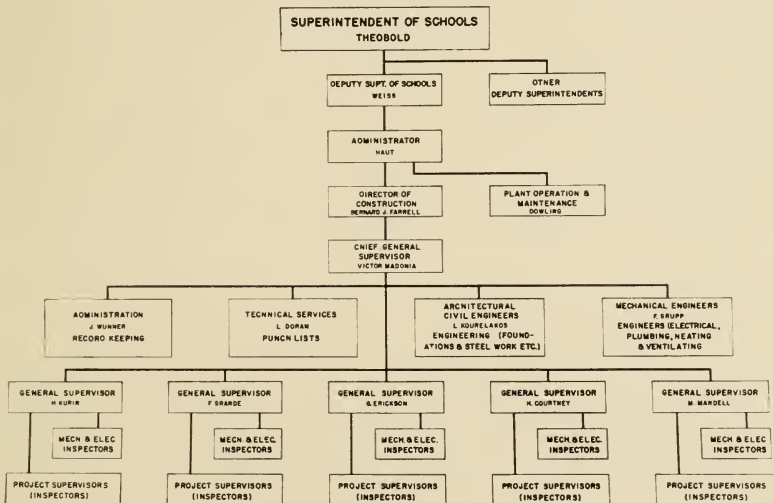
SCHEDULE 2

CHAIN OF ORGANIZATION CONSTRUCTION AND REPAIR OF SCHOOL BUILDINGS PRIOR to August 1959



SCHEDULE 3

CHAIN OF ORGANIZATION CONSTRUCTION AND REPAIR OF SCHOOL BUILDINGS AFTER August 1959



has changed very little,* the administrative chain of command has been completely revised, following closely suggestions made in the Preusse Report. Prior to September 1, 1959 there were separate heads of the Bureau of Construction, and the Bureau of Plant Operation and Maintenance. The Bureau of Construction was charged with the responsibility of erection of schools, while the Bureau of Plant Operation and Maintenance was charged with their maintenance. The heads of both divisions were responsible to the Superintendent of Housing. Under the existing structure, the Deputy Superintendent of Schools has replaced the Superintendent of Housing, the Director of the Bureau of Construction and the Director of the Bureau of Plant Operation and Maintenance. In one man are lodged the powers and responsibilities formerly shared by three, and this one man is responsible only to the Superintendent of Schools, Dr. John Jacob Theobald.

In seeking to fix responsibility the Commission drew a broad line of demarcation between administrative and inspectional levels in both the "old" and "new" administrations. The breakdown which existed on the administrative level was more readily determined, and an examination of higher echelon correspondence provided overwhelming evidence of almost total deterioration in the channels of command. Formal and informal interviews with administrative personnel confirmed the impression of a vast no-man's land which was so strongly suggested by the correspondence.

The "new" administration certainly brought an end to the open warfare between the Bureau of Construction and the Bureau of Plant Operation and Maintenance, for one person was now in charge of all divisions. However, the underlying problems were not solved, as was clearly revealed by an examination of the schools completed after the new administration assumed office. The pleas from the schools were heeded no more promptly, and assessment of responsibility against contractors and architects was non-existent until some months before the Commission's public hearing. The no-man's land

* A Superintendent of Construction is the individual assigned by the Board of Education to supervise construction of its schools. Typically, one such person is assigned to an elementary school, two to a junior high school, and three to a high school. Supervising the Superintendent of Construction is a General Superintendent of Construction, who usually has a half-dozen schools assigned to him. A Superintendent of Construction spends all of his time in the field, while a General Superintendent spends most of his time there. Supervising the General Superintendents are the Construction Managers. Each Construction Manager generally has two General Superintendents under his jurisdiction. The work of the Construction Manager is primarily administrative as is that of the Chief Engineer who oversees the Construction Managers.

was not reduced in size—only some of the sounds emanating therefrom were eliminated.

On the inspectional level, inquiry into the basic problems was far more difficult, and the decision to examine the finances of inspectional personnel involved the relatively small staff of Commission accountants in a vast undertaking. Financial background information was obtained from all inspectional personnel in the Bureau of Construction. Verification of the data submitted involved careful checking with all pertinent data relating to the finances of these personnel. This check was made both from information submitted to the Commission by the individual and by independent field check in some instances. Personal interviews were accorded almost all such personnel in the Bureau of Construction. Whenever there was the slightest doubt, it was resolved in favor of the employee despite the fact that many of the explanations severely taxed one's credulity.

No significant differences in the conduct of inspectional personnel were found to be attributable to the post September 1, 1959 administration, although many of the problems had been brought to the surface and literally demanded attention.*

When Board of Education personnel named school contractors as payors or donors of money or gifts the Commission checked with each and every contractor, except in those instances where to do so would have revealed the employee's identity. Interrogations by Commission personnel stretched over a six-month period, during which time over 250 witnesses were examined at private hearings and over 11,000 pages of testimony were taken under oath.** Hundreds of other witnesses were examined informally both at the Commission's office and in the field.

* See pp. 134 ff. *infra*. Unfortunately, the current administration paid absolutely no attention to the problem until after this Commission made specific and formal inquiry into its policy regarding outside employment and acceptance of gratuities.

** This was in addition to several thousand pages of testimony taken in the pilot stage of the case.

TITLE II

THE SIX DAY PUBLIC HEARING IN NEW YORK CITY

The Commission's extensive investigation culminated in a six day public hearing held on June 20, 21, 22, 27, 28 and 29, 1961 in its Hearing Room at 270 Broadway in New York City.

The aims and purpose of the public hearing were expressed in the Chairman's opening statement:

"During the past ten years, over \$800,000,000 have been spent on new public school construction in the City of New York. In every year of this period the amount appropriated for such construction has represented the largest or second largest single item in the capital budget of the City. Expenditures at an even greater rate have been requested in forthcoming years, and in its 1962 budget request the Board of Education has projected over \$802,000,000 in construction over the next six years.

"I may say that even in these days of inflation that is a lot of money.

"This Commission has not investigated matters affecting educational problems. We all know there are educational problems in the schools of this City, but that has not been the purpose of this particular investigation.

"Our attention has been focused on the 'brick and mortar' part of education, the physical structures in which the children of New York City spend the greatest part of their young lives.

"Much has already been said about the deplorable conditions recently found to exist in the so-called old schools—those built more than 20 or 30 years ago. Inspections of these schools by school and city officials, made only a few weeks ago, as I think we have indicated before, prompted by the investigation that this Commission was carrying on, have found rats running about, gaping holes in the ceilings, leaky roofs and other conditions dangerous to life and limb. This public hearing, however, will be mainly concerned with similar intolerable and hazard-

ous conditions which exist in new schools—schools built within the past few years.

“Section 2 of the Act creating this Commission provides, in pertinent part, as follows:

‘Section 2(1). The Commission shall have the duty and power to conduct investigations in connection with:

‘a. The faithful execution and effective enforcement of the laws of the state . . . ;

‘b. The conduct of public officers and public employees . . . ;

‘c. Any matter concerning the public peace, public safety and public justice.’

“In accordance with these provisions and on the basis of information received, the Commission undertook an investigation and held private hearings. The evidence gathered thus far shows that in the short period that these new schools have been operating, serious defects have already appeared. In many cases these defects became visible within one year after the school opened and repeated requests for action to correct them have been ignored.

“The proper administration of a school building and maintenance program requires: (1) properly trained personnel, (2) diligent supervision at all levels, (3) efficient and well defined procedures, (4) effective liaison between various departments, (5) freedom from political influence and interference, (6) honest performance of duty and (7) dynamic and competent leadership. Investigation by this Commission has clearly shown that these essential ingredients were lacking in the New York City Board of Education’s school construction and maintenance program.

“In the early stages of our investigation, statements were made at one time or another, by different officials of the Board of Education, expressing satisfaction with the manner in which schools were being built and maintained. At long last the Board of Education has been forced to take a hard look at its record in that connection. Its reaction, at the eve of this public hearing, has been frenzied attention to problems many years old and previously not disclosed to the public. On the legal front, it has suddenly discovered long dormant contract rights by which architects may be held financially responsible for faulty design and contractors for faulty construction. We are convinced that had not this Commission undertaken to investigate these deplorable conditions, little or nothing would have been done to

remedy them. In anticipation of our public hearing, frantic activity was rushed into all along the line to do what should have been done over the years. One of the principal functions of this Commission is to alert the public to conditions which demand correction and through public opinion, to force appropriate action.

"I may say that it is my own feeling that one of the lowest things that any architect or any contractor can do is to plan and put up a building that endangers the lives of our children. Nothing, in my judgment, can be lower than that, and I am afraid much of what will be disclosed in this hearing will indicate that there had been contractors and there have been architects guilty of that very thing.

"It is, therefore, the purpose of this hearing to bring to the attention of the People of the City of New York the facts concerning the serious deficiencies in the administration of the school construction program, the resulting waste of public funds, and most significantly, to show how inefficiency, poor administration and corruption result in conditions in the schools which present serious hazards to the health, safety and proper instruction of this City's children.

"And I repeat again, that Government has no more vital purpose than to remove those hazards from the children who go to the schools of this City."

Basically, the balance of this report will summarize the findings presented at the public hearing. In addition, there will be incorporated material based upon the private hearings and investigation pertinent thereto. This evidence falls into three general areas:

1. Design and construction defects;
2. Administrative inefficiency;
3. Violations of law and improper practices.

III. Design and Construction Defects

As indicated earlier the Commission's primary concern was an examination of the quality of construction of new schools. The inquiry in this area began with a physical inspection of such schools by Special Agents of this Commission who also spoke to school personnel and recorded their complaints. These witnesses were then called to the Commission's office for interviews. These school personnel expressed the hope that as a result of the Commission's inter-

vention, something would finally be accomplished. Some witnesses, though convinced of the Commission's desire to bring about a correction of long-standing abuses, felt that the Board of Education's maze of red tape would prove too formidable.

The results of the Commission's study are discussed in full in Section B of this report. In summary, it revealed that there was scarcely a new school without significant design or construction defects, or both. In its haste to compile a record of building many schools, the Board of Education* ignored clear warnings—before construction was actually begun—that contemplated school design was faulty, and accepted non-specification and unsafe materials (Pr. H. 13,694-5; 13,706)** and equipment (520-522)*** rather than defer a school opening. More than one school for which a design award was made was found unsafe or unhealthy. When reports of these conditions were sent to the Board of Education, they table-hopped from desk to desk and bureau to bureau without corrective action.

A. Background

1. *The Custodian and Custodian-Engineer*

The daily physical management and care of a school is handled by a custodian or custodian-engineer employed by the Board of Education. Each school usually has its own custodian or custodian-engineer on the premises who has a staff of helpers. It is the custodian-engineer who "lives with the building" and is charged with the responsibility for operation of its facilities. He opens it in the morning, shuts it at night, heats it, makes minor repairs and keeps it clean.

The minimum requirements for a custodian are prescribed by the New York City Civil Service Commission (Department of Personnel) and are reproduced in Appendix B. Generally they call for three years of experience as a building superintendent, or a combination of less experience plus a license or degree in engineering or related trades. For schools 75,000 square feet or more, a custodian-engineer must be employed. To qualify as a custodian-engineer, the applicant must possess five years of experience in the building trades, or a satisfactory equivalent, plus a New York City Engineer's License.

* The term "Board of Education," unless otherwise indicated, is used in this section to refer to the Bureau of Construction and Bureau of Plant Operation and Maintenance, and not to the nine-member unsalaried group. The latter is discussed at p. 180.

** Page reference to private hearing testimony.

*** Page reference to public hearing testimony.

The Civil Service minimum requirements for a custodian-engineer are reproduced in Appendix C.*

The custodian receives a lump sum allowance from the Board for the servicing of his school. This amount is based upon the size of the school building, type of special equipment, if any (e.g. swimming pool, high pressure boiler), and other factors. From this allowance he pays employees whom he hires and the remainder is his compensation or salary. The decision as to the number of assistants to be employed is completely with the custodian; he may even undertake the complete management of the school by himself.

The custodian not only has carte blanche in the number of helpers he may hire, but is also the sole judge of their quality and competence as well. They work directly under him and are responsible to him alone. There are no minimum qualifications which they must meet, and a custodian may engage a man "off the street" if he desires.

Several months before a new school officially opens for students, a custodian is assigned to it. During this period he accepts delivery of furniture and supplies, tests equipment and familiarizes himself with the building. In order to assure that the Board of Education has received a good physical structure and all that it has contracted for, a complete top to bottom survey of the school is made by the custodian during the first year and the results are reported to Bureau of Construction and other appropriate Board of Education authorities. This report is known as the "punch list."

2. *The Punch List*

The punch list is an itemized list of structural defects, unfinished work and other complaints, and is sent by a school custodian to the Bureau of Construction. An extract of such a punch list is reproduced below in Schedule 4.

A separate punch list is submitted for the four prime contractors: (1) general construction, (2) electrical, (3) heating and ventilation, and (4) plumbing and drainage. The significance of the punch list cannot be over-emphasized since most construction materials and workmanship are guaranteed by the various contractors for a period of but one year. Any complaint which is reported on the punch list submitted to the Bureau of Construction** is then referred to the responsible contractor for appropriate action. Should the Bureau of Construction fail to notify the contractor within the one-year

* For the remainder of this report, both custodians and custodian engineers will be referred to as "custodians."

** A copy of the punch list is also sent to the contractor.

PUNCH LIST

SCHOOL	<i>P.S. 138</i>	BOROUGH	<i>Bronx</i>
CUSTODIAN	<i>Joseph J. Oldak</i>	DATE	<i>July 18, 1959</i>
TYPE OF CONTRACT			<i>General</i>
(General) (H and V) (Sanitary) (Electrical)			

Defects During the One Year Guarantee Period

CHECK ONE: 4th MO. 10th MO. ☒)

One Year Guarantee Period starts Sept. 5 1958

LIST ALL DEFECTS AND THEIR LOCATION

Number each item. If an item is repeated on 10th month list, use same number as on 4th month list. New items should be given new higher numbers. Use one sheet for each type of Prime Contractor: General, H and V, etc. Submit typewritten, clear carbon or pencil copies for electronic reproduction if needed.

✻ ✻ ✻

32. Repair warped outside door of classroom 318.
33. Repair warped entrance door of classroom 305.
34. Repair warped entrance door of classroom 303.
35. Repair warped entrance door of classroom 202.
36. Repair warped entrance door of classroom 203.
37. Repair warped entrance door of classroom 204.
38. Repair warped entrance door of classroom 206.

Screened 19 . . . by

..... (Supervisor of Custodians) *Bronx* (Borough)

Pictured above is an extract of a ten-month punch list prepared by the custodian of P.S. 138, Bronx. More warped doors as well as different defects were listed on subsequent pages of this six-page punch list, which was limited to complaints concerning General Construction only. Separate punch lists were also submitted for the mechanical trades, i.e., Heating and Ventilating, Sanitary, and Electrical.

warranty period, in the absence of fraud, his responsibility is ended. Until 1959, it was required that a custodian assigned to a new school submit a punch list four months after substantial completion (known as the four-month punch list) and a second after ten months (ten-month punch list). In December 1959, this system was revised, and two punch lists are now submitted as follows: a "final payment" list is submitted one month before final completion of the building; the "one year guarantee punch list" is submitted two months before expiration of the one year guarantee.

It is not unusual for a contractor to disclaim responsibility for a reported defect. He may assert that another contractor was at fault or perhaps charge that his work was performed strictly according to the plans and specifications of the Board of Education which, he alleges, were faulty. The resolution of these disputes is the task of the "punch list team" which consists of representatives of the Bureau of Construction and Bureau of Plant Operation and Maintenance. (The latter is charged with the operation and maintenance of old schools and new schools after the expiration of the one-year warranty period.) To illustrate: Assume that a custodian reported on his punch list that he could not adequately heat certain rooms of the school. The heating and ventilating contractor might claim that the windows in those rooms were improperly installed by the general contractor, resulting in excessive air infiltration which causes a heat loss. If true, this would be the responsibility of the general contractor to correct. Or the heating and ventilating contractor might allege that the plans do not call for a sufficient number of radiators in those cold rooms. If true, he would be absolved of the obligation of correction and the punch list team might assign to Bureau of Plant Operation and Maintenance the duty of contracting for more radiators, expending additional City funds.

Where a defect is noted on the punch list and attributable to faulty workmanship or material, the elimination of the problem should be by the contractor at no expense to the Board of Education. Unfortunately, this has too often not been true.

3. The Punch List Team

The punch list team's function is to review the custodian's punch list and equitably assign responsibility between the various contractors and the Board of Education. After responsibility is defined the next step, theoretically, is the correction of the defect by the contractor judged responsible—or the Board of Education, if the error was one of design. The "revised" punch list resulting from the

conference of the punch list team, too often appeared to have been prepared by the contractors rather than representatives chosen to protect the Board of Education's interest.

Custodian Joseph Oldak was assigned to Public School* 138, Bronx, in July 1958, three months prior to its official opening. He noted that the contractor was *installing* warped doors and reported this on both his four and ten month punch lists. An extract of his ten month punch list appears at p. 26, *supra*.

Subsequent to the submission of the second punch list a conference of the punch list team was held at the school to review its items. As a result of this conference the punch list team reduced the number of items reported by Mr. Oldak from 209 to 39,** and modified the description of serious defects to appear as of minor importance.

“Q. In other words, the punch list team of the Board of Education cut down the number of items which you had reported as the contractor's responsibility to correct?

A. Yes, sir.

Q. When we talk of cutting it down, they didn't cut down because the conditions had been corrected, did they?

A. No.

Q. What happened, Mr. Oldak, to the way you had described your warped door condition? How did they describe it in their subsequent revised list?

A. The warped doors were rephrased to 'adjust all hardware so as to ease operation.' (274-275).

Mr. Oldak stated that an adjustment of hardware of course would not eliminate the problem of warped doors. He could not explain why no attempt was made to replace the doors.

Mr. Barnet Miller, a member of the punch list team representing the Bureau of Plant Operations and Maintenance reported the results of that conference to his superior, Mr. Morris Liebeskind, Deputy Superintendent of Maintenance. He complained that many items were eliminated over his objections. Where correction was assigned to the Bureau of Plant Operations and Maintenance, this

* "Public School" will hereinafter be abbreviated "P.S."; "Junior High School" as "J.H.S."; and "High School" as "H.S."

** These were items contained only in the punch list for general construction. It did not include the other mechanical trades which had separate punch lists.

meant additional expenditure of Board of Education funds and releasing the contractor from financial liability.*

At P. S. 140, Bronx, a new school completed in 1956, Principal Bernard Kaback assisted his custodian in preparing the punch list. After examination by the punch list team, the punch list submitted by Mr. Kaback and his custodian was emasculated. Mr. Kaback was asked about this at a private hearing:

“Q. Did you not, in fact, write to the then Superintendent, Mr. Correale, and complain about the fact that the Board of Education punch list team had cut down the items too severely?

A. I do not recall whether I wrote to Mr. Correale about this, but I certainly spoke to him and several others, voicing my complaint that it was bad enough for the contractors to want to cut down our punch list, but that it was much worse for our own Board of Education punch list team to cut down our number of items.

Q. How did he react to that?

A. I don't remember what reaction I got excepting that the punch list was cut down. As a matter of fact, I may have written to Mr. Correale, but if I did, I certainly got no answer.” (Pr. H. 11,678-679).

4. Requests by Principals Ignored

Where defects reported during the first year continued uncorrected, custodians did not hesitate in following up their punch lists with further requests for action by letters and phone calls.** As custodians, it is, of course, of primary concern to them, as well as their duty, to operate a sound physical structure. Besides, it is to them that complaints of improper conditions are brought from teachers and students. Receiving no satisfaction from the Board of Education, despite repeated and continued notice, custodians often felt obliged to seek the aid of the school principal in urging the Board of Education to take the necessary corrective action. The pleas of even the principals went unheeded. Occasionally, to pacify a persistent principal, a token inspection of the school was made,

* Shortly before the Commission's public hearing, the Board of Education instituted a policy of backcharging. See p. 111, *infra*.

** Defects appearing after the first year are reported to the Bureau of Plant Operation and Maintenance by a formal "Request for Repairs." A copy is reproduced on p. 55.

followed, at times, by a conference. But actual correction rarely followed. This highly refined Board of Education practice of meaningless inspections was succinctly described by a principal who had been complaining unsuccessfully for over two years about conditions at her school. It should be pointed out that this principal interceded only because the custodian's complaints, which preceded hers for a year, were ignored.

"Q. This is as far as you got?

A. That's all, just to inspect. That's all I have been able to get, inspections." (Pr. H. 9913).

Not all principals achieved even this small measure of success. Their complaints too were greeted with the same indifference as those of their custodians. In many instances principals did not even receive the courtesy of a reply (352).

B. Conditions of School Construction Revealed at Private and Public Hearings

The classification of school conditions which follows is mainly for descriptive purposes, and some overlapping is inevitable. For example, J.H.S. 14, Brooklyn, appears under the category "Leakage," where its nine year history of a leaking roof is discussed. This condition was reported immediately after the school had opened. If the Board of Education had acted promptly, the problem could have been eliminated while still of a relatively minor nature, and at the contractor's expense. Because of inexcusable delay and buck-passing, the condition was permitted to worsen to such an extent that an entire roof replacement and other related work, costing about \$60,000 have been found necessary by the Board of Education—surely an example of "Incredible Waste"! Therefore, this school could easily be discussed under both categories. Furthermore, there are schools which unhappily report many different defects, e.g., P.S. 138, Bronx, which has a heating problem, defective concrete, cracked parapets and warped doors difficult to open. Similarly, much will be heard concerning J.H.S. 142, Bronx, in more than one category.*

* J.H.S. 142, Bronx, was the subject of a complete engineering survey. A summary of the engineer's findings will be found in Appendix D. P.S. 138, Bronx, though not examined from roof to basement, did have tests made for many structural defects. For this reason both schools appear often in the following discussion of design and construction defects.

Consideration was also given to classifying defects according to cause, such as, "Defects Attributable to Faulty Design," "Defects Attributable to Fraud," and other characterizations. However, this would have required an expression of judgment about which there might have been disagreement. Moreover, the Commission found school defects whose cause has never been determined by the Board of Education. For example, the Commission found a school whose heating problem had never been resolved as to cause although it had existed for over four years. Although one might question the classification under which a defect is listed, no one can dispute the existence of any of the conditions described.*

In summary, therefore, what follows are representative of the Commission's findings and do not purport to be a complete catalog of all defects known to the Commission.

1. *Fire Hazards*

a. Role of the Fire Department

The fire laws and regulations covering New York City schools** confer upon the Fire Department of the City of New York authority to inspect school facilities. Its jurisdiction, however, is limited to such matters as fire extinguishers, drapes, and combustibles. Under the law, conditions inherent in the actual building structure are under the jurisdiction of the Building Department. In spite of these theoretical restrictions, the Fire Department—because of its expertise in the field of fire prevention—has assumed the responsibility of inspecting all matters in schools which pertain to fire safety.

Before the disastrous Chicago school fire on December 1, 1958 which claimed the lives of ninety-five,*** the New York City Fire Department regularly inspected New York City schools once a year.**** The number of these routine inspections was doubled after that fire.

After every such regular Fire Department inspection, copies of a formal School Inspection Report are sent to Board of Education

* The conditions enumerated were verified by Board of Education records themselves.

** Building Code (Chapter 26, Administrative Code of the City of New York); Fire Prevention Code (Title C, Chapter 19, Administrative Code of the City of New York); State Education Law; Fire Department Regulations.

*** There were also fifty-six injured at the fire, which took place at the Our Lady of the Angels Parochial School. Three of the ninety-five killed were nuns.

**** In addition to these routine periodic visits, inspections are also conducted in response to specific complaints.

authorities for appropriate action. Where a violation is observed, it is listed on a form known as an "A-8" [Fire Prevention Violation Report] and accompanies the School Inspection Report. Actual copies of both such reports are reproduced on pp. 34-36, as Schedules 5 and 6.

The language used in these reports, "violation," "hazard," "recommendations," is discretionary with the inspecting officer. Because of its jurisdictional limitations, the Fire Department often makes "recommendations" which are outside its area of responsibility and which it therefore cannot technically characterize as "violations." It is not unusual for an inspecting fireman to characterize as hazardous conditions which meet the minimum legal requirements of the Building Code.* For years, conferences between the Fire Department, the Building Department and Board of Education officials have been held in attempts to meet this problem, without any appreciable success.

After forwarding copies of its School Inspection and Violation Reports to the Board of Education for correction, the Fire Department has no power to enforce action. There is but one exception to this restriction: Where a condition exists, which in the judgment of the Fire Commissioner represents "an imminent peril" to life, the school can be ordered closed (Pr. H. 12,043). This is a power which has not often been used for it requires willingness on the part of the Fire Commissioner to support his action in the New York Supreme Court in an "Article 78" Proceeding.** Since December, 1958, this power to close a school because of "imminent peril" was invoked twelve times.***

b. The Commission Steps In

i. *Private Hearings*

During the Commission's examination of custodians, many complaints were expressed concerning lack of attention given by the Board of Education to the elimination of serious fire hazards. In all such cases, the conditions had appeared on the custodian's punch list, Fire Department Reports, or both. In many instances, Fire Department violations had been outstanding for many years. The

* See discussion of Martin Van Buren H.S., Queens, p. 33, *infra*.

** An Article 78 Proceeding (*New York Civil Practice Act*) is one invoked to challenge in the courts a decision by an administrative agency on the grounds that it is arbitrary and capricious.

*** On another occasion, the Fire Department threatened to close Martin Van Buren High School, Queens, unless a fire hazard was eliminated within twenty-four hours.

conditions which custodians reported to the Commission were serious ones such as classroom doors and exits which could not be opened, or which opened with great difficulty, dangerous oil burners and the like. The Commission felt compelled to bring these matters to the attention of the Fire Commissioner with the view of eliminating these serious fire hazards.

ii. *The Commission Writes Fire Commissioner Cavanagh*

On February 16, 1961, the Commission's first letter concerning a specific school was sent to Fire Commissioner Edward F. Cavanagh, Jr. That letter concerned J.H.S. 51, Richmond, where the custodian reported many inoperable doors and exits. One such door—the main entrance door—was so bad that it required three men using a crowbar to open it. This letter of February 16, 1961 was followed by subsequent Commission communications on March 21, April 11, April 21, April 28, May 5 and May 17, 1961 which reported conditions in other schools.

iii. *The Fire Department Responds*

Almost immediately upon receipt of the Commission's letters, the Fire Department ordered the subject schools inspected. As had been its long-established policy, copies of the Fire Department's School Inspection Reports and Violation Reports were dispatched to all appropriate Board of Education officials. One school, Martin Van Buren H.S. in Queens, was the subject of a letter by this Commission on April 28, 1961. That letter was sent after the Commission, by questioning the custodian and examining school records, had learned of two conditions which had been continuously reported by the Fire Department as fire "violations" to the Board of Education since 1958. These were of a structural nature and were inherent in the school building since it opened in 1955—6 years before. A 1958 letter from Queens Borough Superintendent Nathan Stern to Superintendent of Maintenance D. F. Lehnert mentioned the following as "some" of the "violations" then existing:

"a. Wrong door swing at auditorium stage exit.

b. Open air shaft from ceiling of paper storeroom to roof."

The Commission's letter quoted the above language and requested of the Fire Commissioner whatever reports and information the Fire Department had concerning these matters. The Fire Department Inspection and Violation Reports are reproduced as Schedules 5 and 6 respectively.

SCHEDULE 5

Fire Department Inspection Report

Martin Van Buren High School

A-187 (3/59) Tab.

SCHOOL INSPECTION REPORT

April 3rd, 1959

Date

Name of School Martin Van Buren High School Classification High School

Location 230-17 Hillside Ave., Qns. Village Borough Queens 27

Owner City of N. Y., Bd. of Educ. Address 110 Livingston St., Bklyn.

Person in charge Mr. Thomas Breen Title Custodian

Construction Fireproof Area 200' x 250' Storied 4

No. of classrooms 90 Number of Pupils 4,800 Age Group 14 to 18

Date Built 1955 Date Occupied 1956

1. Means of Egress 10 stairwells (each containing 2 stairways) F.P. thruout.
All lead directly to exterior of structure.
Doors: S.C.F.P.—some defective—A-8 Fwded 12-12-58
2. Shafts, etc. Shafts: None
One for waste—cellar to 3rd floor.
Chutes: One for cafeteria—cellar to basement.
3. Interior Fire Alarm Yes—inspected daily—record kept.
Nearest Box: #6716, 233 St. & Hillside Ave.
14 held since beginning of school term.
4. Fire Drills Record kept—evacuation period: 2 mins. 15 secs.
5. Portable Fire Appliances: Sufficient in number and properly maintained.
All sprinklered—Housekeeping good.
6. Storerooms Paints in vented and sprinklered room.
Fuel oil system—Housekeeping & maintenance excellent.
7. Heating Plant Required permits posted.
8. Kitchens One—basement level. Asbestos blanket
Housekeeping excellent—Ducts serviced—4 CO2 extinguishers.
9. Workshops Four for student instruction—Housekeeping good.
10. Housekeeping Excellent.
11. Hazardous Materials Less than 5 gals. gasoline in locked cabinet and in
approved can adjacent to automobile shop.

SCHOOL INSPECTION REPORT—Continued

- Standpipe: none*
12. Sprinkler Standpipe Systems *Sprinkler: In storage room and shops.*
Tests
13. Electrical Defects *None*
14. Auditorium—Stage *Yes—properly maintained and regulations complied with.*
15. Violations *A-8 forwarded 12-12-58 listing 6 violations. None of the violations have been complied with, but Custodian stated that contracts have been let for remedy of same.*
16. Recommendations *Violations as enumerated on above A-8 be complied with.*

1st Endorsement: Examined & verified

Name John J. Sesady

Batt. Chief Edward P. Cahill 4-11-59
54 Batt. Gr.2

Rank—Title Captain

Unit Leader 162—Group 1

Deputy Chief 13 Div. Gr.

SCHEDULE 6

Fire Department Violation Report

Martin Van Buren High School

A-8 (10-1-54)

Co. <u>L. 16</u>
Batt. <u>54</u>
Div. <u>13</u>

FIRE DEPARTMENT

FIRE PREVENTION VIOLATION REPORT

Refer to F.D. _____

Account Number _____ Date January 10, 1958

Premises _____

Location 230-17 Hillside Ave. Boro Queens 27

Owner of City of New York, Mailing _____

Building or Agent Bd. of Educ. Address 110 Livingston St., Bklyn

Type of _____

Name of Occupant Martin Van Buren H.S. Floor all Occupancy School

Construction _____

Classification Fire Proof Occupancy _____

Classification Public

Height 4 stories Area 200 x 250

Item No.	Nature of Violation	Enforcement Law	Section of Law
1	Defective fire doors on 2nd floor at library.		
2	Defective cross-corridor fire doors on 2nd fl. at entrance to north wing.		
3	Defective stairway fire doors on north wing stairs and front stairs.		
4	Asbestos covering for door leading from motion picture booth to escape hatch not fixed to door.		
5	West exit door on 1st floor leading from auditorium stage opens inwardly.		

Remarks _____

FOR DIV. OF E.P. USE ONLY	
Referred to: H. & B. <u>8/13/8</u>	<u>166-R</u>
DATE	REPORT NUMBER
OTHER DEPT. _____	DATE _____

SIGNED John J. Sesody

RANK Capt. UNIT L. 162 Gr. 1

..... DETACH HERE FOR OTHER THAN FIRE DEPARTMENT USE

Return to: FIRE DEPARTMENT—Div. of Fire Prevention.

Municipal Building. New York City 7, N. Y.

FIRE DEPARTMENT FIRE PREVENTION VIOLATION REPORT—Continued

Disposition of Report Number _____:

Co. L. 162

Batt. 54

Div. 13

SIGNED _____

DEPT. _____

1st Endorsement: Examined.

Batt. Chief J. Silbult Byrne

54 Batt. Gr. 8

Deputy Chief Joseph D. Riviney 1/12/58

13 Div. Gr. 3

Deputy Chief in Charge _____

Boros of Bklyn & Queens

Whereas the custodian's prior appeals for help, and Fire Department reports referring this violation to the Board of Education went unheeded for years, this Commission's letter produced the opposite result. The custodian's secretary, on May 2nd, 1961, reported to the Commission the following chronology of events:

May 1st, 1961—11:45 a.m.

Chief Fire Marshall Scott and Deputy Fire Marshall Vincent Cauty inspected the school.

May 1st, 1961—2:45 p.m.

Chief Bertini inspected and stated that conditions would have to be corrected before 8:00 a.m. May 2nd.

May 2nd, 1961—8:00 a.m.

Chief Bertini arrived and stated Commissioner Cavanagh had ordered the school closed because the conditions had not been corrected.

May 2nd, 1961—8:30 a.m.

Acting Deputy Chief Duchin arrived for inspection, followed shortly thereafter by Deputy Assistant Chief Hartnett, Chief Keogh, also Battalion Chief Kayhill. Fire Department and press photographers followed. Shortly thereafter, Dr. Schoenberg, Deputy Superintendent for the Board of Education, phoned the Principal. Chief Hartnett now stated that the building

would not be evacuated. Bureau of Plant Operation and Maintenance inspector Byrne arrived and also a Bureau of Plant Operation and Maintenance carpenter. A representative of the City of New York, Department of Investigation also appeared. Two officials of the Bureau of Construction, Joseph Ditizo and John J. Saunders came to inspect. Mr. Saunders contacted Captain Lynch of the Bureau of Fire Prevention.

The condition, which had continued for approximately 5 years, was corrected within approximately 24 hours. The Fire Commissioner's reply on May 2nd to this Commission's letter pointed out that the "shaft" was above a sprinkler room and "consistent with the approved plans for the building." With regard to the "wrong door swing" the Commissioner's statement in his letter and his action taken illustrate that compliance with the minimum requirements of the Building Code do not insure that a school building is structurally safe:

"With reference to 'a' above [wrong door swing], as the attached reports will indicate we have recommended to the school authorities on several occasions during and since 1958 that the 'swing' of the door in question be reversed. Although these records indicate to us that the Department of Buildings has approved the arrangement referred to, the Fire Commissioner has today directed an immediate change in the 'swing' in one door at the base of the fire stairway."

In response to a communication from this Commission dated April 21, 1961, which reported on conditions in six schools, a meeting of Fire Department and Board of Education personnel was called at Fire Department Headquarters on April 26, 1961. Representing the Fire Department were Chief Fire Marshall Scott, Deputy Assistant Hartnett, Acting Battalion Chief Meyers and Captain Charles Lynch. Deputy Superintendent of Schools Joseph Weiss, Dr. Nevins of Dr. Theobald's office and several other highly placed representatives of the Board of Education were present. The custodians of the schools which were the subject of the Commission's letter of April 21, 1961 were there and discussed the fire hazards at their respective buildings.

Chief Fire Marshall Scott was later questioned about this meeting:

"BY MR. FISCH: You discussed the conditions at the schools?

CHIEF FIRE MARSHALL SCOTT: Naturally.

MR. FISCH: Did the Board of Education indicate to you that they would take action on these conditions?

CHIEF FIRE MARSHALL SCOTT: Right from the start, when we brought it to their attention, yes." (Pr. H. 12,094).

As will be seen, this assurance from the Board of Education given to the Fire Department was no more reliable than its treatment of prior warnings from the same custodians about the same conditions.

On April 26, 1961, less than three months after the Commission's first letter to the Fire Commissioner, a change of the Fire Department's school inspection policy was announced by Fire Commissioner Cavanagh in a letter to Superintendent of Schools Theobald. Effective May 1st, the Commissioner declared, schools were to be inspected at least once every 90 days. Although he insisted at a private hearing on May 24, 1961 that this change of policy was not attributable to the Commission's intervention, it should be pointed out that the previous twice-a-year policy had been in existence for years. And, as was previously stated, prior to the establishment of inspections twice a year, the policy had been one per annum.

iv. Interview with Fire Commissioner Cavanagh

In reply to a request from the Commission, Fire Commissioner Cavanagh agreed to appear at the Commission office on May 24, 1961 to discuss the matters hereinbefore referred to. He was accompanied by Chief Fire Marshal Scott, who has had over 40 years experience in this field (Pr. H. 12,156). Commissioner Cavanagh set forth the role of the Fire Department in school inspections, described its jurisdictional limitations and lack of enforcement power:

"Were the Fire Department to limit its inspections to what it is charged with under the law in schools, we would be inspecting fire extinguishers, drapes in auditoriums, hoses on the stand pipe systems and possibly fire exits although there is a serious doubt in the law on that point. But we have not limited ourselves to any of the categories mentioned in the law; we have on the contrary, become the primary inspecting agency on all matters relating to safety or possible hazard.

"So, as a result, we found ourselves, in the last five years making 99, 98, 97% of our inspections on matters which are within the jurisdiction of other departments. . . ." (Pr. H. 12,041).

The Fire Commissioner was outspoken with respect to the failure of the Board of Education to correct fire hazards which had been reported to it repeatedly for years:

"Q. Quite frankly, as a layman, I was rather shocked when I had people from the Board of Education come down and tell me that conditions had existed at the school for years without correction. . . .

A. I think our records will show that. Our records will show, in school after school, we have made recommendations 1, 2, 3, 4 years.

P.S. 98 in Brooklyn: We have been requesting that stairway be enclosed since 1950; our records show that. But you have no law making them close it." (Pr. H. 12,057).

The Commissioner pointed out that conditions reported by inspecting personnel of his Department as "fire hazards" may nevertheless be in conformity with the Building Department requirements. Very often this technical argument has been made by the Board of Education in defense of its adamant refusal to heed Fire Department recommendations. But, as Fire Marshall Scott pointed out, it is important to keep in mind that an investigation of the disastrous Chicago school fire disclosed not a single technical violation had existed (Pr. H. 12,137). The importance of adopting recommendations of men trained in fire prevention, therefore, cannot be overemphasized.*

Commissioner Cavanagh very strongly stressed his conviction that all conditions which the Commission had reported plus others which had been permitted to remain for so long, would be corrected before the schools opened in September. In view of his dissatisfaction with the Board of Education's past record of performance**

* There were 190 fires in N.Y.C. schools during 1960. This was 9 more than the combined total of fires in airports, cabarets, churches, dance halls, motion picture theatres, N.Y. transit stations, theatres, and T.V. stations. The only place of public assembly having more fires was hospitals with 191. *1960 Annual Report of the Fire Department*, p. 16.

** "MR. VERGARI: You say that you are less than satisfied with the performance of the Board of Education . . .

THE WITNESS: Yes." (Pr. H. 12,117-118).

Also,

"Q. Did you also have occasion, sir, to tell Dr. Theobald that you were less than satisfied in what had been found and that conditions had not been corrected quickly enough?

A. Yes." (Pr. H. 12,110).

he was asked what assurance he had that they would finally be stirred to action:

"Q. In other words, what if after the meetings of April 26 [1961], when some of these conditions were pointed out to the Board of Education, they still didn't correct it, in the absence of imminent peril, which is a difficult thing to justify.

A. I don't want to be presumptuous, and with all the seriousness that I can assert, they will be corrected and there won't be a school open in September with one thing existing that we have recommended at any time; not only in the last 60, 90 days, six months, but as far as our files can possibly show it, it will be corrected.

* * *

... I am not going to permit firemen to go out day after day, conscientiously seeing conditions, expressing their opinion in writing that it should be corrected, having it come through our battalion, our division, our borough, come to Fire Headquarters, go to the Board of Education, and then have them go back again and find out they have been ignored.

* * *

We gave them [the Board of Education] that ultimatum twice in writing last year.

MR. FISCH: And they did nothing about it?

MR. VERGARI: This is the second one?

THE WITNESS: This will be the second ultimatum, that's right.

* * *

BY MR. FISCH:

Q. Can we be sure that the conditions which we have found will be corrected by September?

A. I think most of them are done now.

Q. Then wouldn't you attribute—

A. I would attribute the conditions you brought to my attention and which are corrected or will be corrected 1,000% to you and some others too; some other too. I want to give you all the credit, you should get more. . . ." (Pr. H. 12,139-12,145).

v. *Testimony at the Public Hearing Concerning Fire Hazards*

Witness after witness, all Board of Education employees, related the dangerous fire conditions which they had endured for so long*. As a result of the Board of Education's inaction, there were instances when children were trapped and unable to free themselves from classrooms because of doors they could not open. Custodian John Clark of J.H.S. 263, Brooklyn,** told of the time in December, 1955 when approximately 35 children were trapped in Room 337, unable to get out:

"Q. For how long were they locked in that classroom?

A. Oh, an hour and one-half.

Q. Were you contacted to try to get them out, Mr. Clark?

A. Yes, I was.

Q. How did they actually get out of the classroom, Mr. Clark?

A. Through a window out into the auditorium roof, leading to the auditorium roof.

COMMISSIONER LANE: How come the door was locked?

THE WITNESS: Defective lock.

Q. There was a defective lock in the schoolroom?

A. Yes.

* * *

COMMISSIONER LANE: Mr. Clark, if a fire broke out while that lock was defective, that would be rather serious and tragic consequences.

THE WITNESS: I have to smash the door.

COMMISSIONER LANE: You may have had a few deaths there, too, before you got to the door.

THE WITNESS: Yes.

* After the Commission's intervention and in the midst of the publicity caused by the Fire Department's accelerated school inspection policy, Charles Silver, President of the Board of Education, requested a report from the Fire Department on school conditions. On June 2, 1961 (approximately three weeks before the Commission's public hearing began), Fire Commissioner Cavanagh responded by sending President Silver photostatic copies of his school inspection reports which listed 1,878 "current violation orders." In his letter of transmittal, Commissioner Cavanagh reminded President Silver that:

"Some of the recommendations made are duplicates of recommendations made over a period of years by this Department."

** J.H.S. 263 was completed in 1955 at a cost of over \$2,500,000.

BY MR. TAUBER:

Q. As a matter of fact, Mr. Clark, you tried to get the door down and it took you a good two hours, did it not, to get it down?

A. Yes, that is true." (320-326).

A day or so after this happened, Mrs. Elizabeth C. O'Daly, the then principal, wrote Dr. Moskowitz concerning the incident. On December 27, 1955, Dr. Moskowitz sent a copy of Mrs. O'Daly's letter to Mr. William H. Correale, Director of the Bureau of Construction, with a letter of transmittal* which warned:

"This is an emergency which requires your immediate attention."

On February 27, 1956, having received no action, Mrs. O'Daly wrote Dr. Moskowitz** about the "very serious problem of locks" in her new school which "are constantly breaking down." The last paragraph of her letter concluded with an oft-heard complaint:

"I wonder if it would be possible to ask the contractor who supplied them not to just inspect them, but perhaps to replace them entirely. I hate to look forward to years of this kind of difficulty."

On September 24, 1956, Mrs. O'Daly again wrote Dr. Moskowitz. On October 8, Dr. Moskowitz again wrote Mr. Correale. In his letter,*** Dr. Moskowitz pleaded:

"Please note that a class has been 'locked in' because of lock failure. This can be very serious. May I suggest immediate attention to this matter. It sounds too hazardous to admit of any delay."

Mr. Correale's reply on November 21 to Dr. Moskowitz was a summary dismissal of the complaint charging that the locks were damaged because of vandalism. Mrs. O'Daly answered Mr. Correale's letter on December 6 telling them that such was not the case. It should be noted that almost a full year had passed since 35 children had been trapped in a room, and the only action taken was a multiplication of correspondence.

The results achieved by this 5½ year stream of letters was described by the custodian at the public hearing:

* Introduced at the public hearing as Commission Exhibit #21.

** Introduced at the public hearing as Commission Exhibit #22.

*** Introduced at the public hearing as Commission's Exhibit #23.

"Q. Mr. Clark, in connection with all this, are the locks still jamming in the school today?

A. Yes.

Q. Has anyone been locked in a room recently?

A. Yes.

Q. Who was that, sir?

A. A teacher.

Q. When was that?

A. Three months ago.

Q. How did she get out?

A. It happened to be a man.

Q. This was the only other incident or do you recall others?

A. Yes.

COMMISSIONER GRUMET: In other words, it was not a helpless female. This is a man.

THE WITNESS: This happened to be a man. The case I am going to speak about was also a man, up in Room 202.

Q. That is a third incident?

A. Yes.

Q. Were there any others that you can recall?

A. Well, I don't recall the others. There were other cases But I don't recall the number of the room. There were no pupils in them." (330-331).

Mr. Clark's school was not the only new one where children were trapped because of doors which could not be opened. Mr. Joseph Oldak, custodian of P.S. 138, Bronx, complained to the Board of Education that the contractor *had installed warped doors*. which even adults could not readily operate. At least 21 such warped doors were reported on his four month punch list of March 21, 1959.* The Board of Education should have immediately compelled the contractor to remove these blatantly defective doors and replace them with good ones. No such effort was even made. By the time the second punch list was submitted, more warped doors were observed and reported, in addition to the 21 appearing on the first punch list. It required no clairvoyance to predict what would happen:

* Introduced at the public hearing as Commission Exhibit #13. An extract of the ten month punch list—which reported more warped doors—is reproduced as Schedule 4, p. 26, *supra*.

"Q. As a matter of fact, was it ever necessary for you to rescue a child who had been trapped in a classroom and who could not open the door himself?

A. One time, I happened to be in front of a room where a child was calling out and I found him struggling and he could not open the door. I opened that door.

Q. How old was that child?

A. Kindergarten, about six years old.

* * *

BY MR. FISCH:

Q. As a matter of fact, did the teachers complain that they themselves could not open the doors?

A. Yes, sir.

Q. Mr. Oldak, did you find that you had trouble opening the doors?

A. Yes, sir. It was necessary for me* to take a second grip to open the doors.

Q. You found it difficult to open the doors?

A. Yes, sir." (270-271).

After Mr. Oldak brought these conditions to this Commission's attention at a private hearing in March, 1961, a letter was sent to Fire Commissioner Cavanagh.** An inspection by the Fire Department confirmed the presence of warped classroom doors, and noted other hazards.*** Shortly after this inspection, Mr. Oldak was summoned to a meeting at Fire Department Headquarters where he and other custodians related their complaints to representatives of the Fire Department and the Board of Education. After listening to Mr. Oldak's report, the Board of Education assured the Fire Department that conditions would be corrected. At the public hearing, almost two months later, Mr. Oldak testified that the warped doors had still not been replaced and that an adjustment of the hardware was the only work performed. This could not eliminate the problem, he stated.

Another school discussed at the Commission's public hearing was P.S. 50, Richmond. Here, a potentially dangerous boiler condition

* Mr. Oldak is over six feet tall and weighs about 250 pounds (271).

** Introduced at the public hearing as Commission Exhibit #16.

*** See p. 72.

was brought to the attention of the Board of Education while the school was in its final stages of construction. Though it would jeopardize the safety of its occupants, the Board opened the school without correcting the defects. In its frantic rush to have the school open,* the custodian's warnings concerning the defective and dangerous boiler were disregarded. The custodian, Anton Krusynski, whose 18 years experience working with boilers included employment with the Fire Department, testified at the Commission's public hearing. He described the dangerous boiler condition and stated that such a condition has been known to "blow a boiler wide open." (521).

Before construction of the school was completed, this defect was noticed when the boilers were first started. The Resident Superintendent of the Board of Education observed the condition himself when on the job. In addition, it was known to others in a very high level of authority in the Board of Education:

Q. As a matter of fact, before the school opened, weren't you visited by the top brass of the Board of Education?

A. I was.

Q. They wanted to find out whether the school would open on time?

A. Yes.

Q. Did they ask you whether the school would be opened on time?

A. Yes.

Q. Could you tell us what your response was?

A. At the time, they asked me if the school was ready to be opened and I said no. And they asked me why and I told them that one reason was that the school was not properly clean for the reception of children, and another reason was that the one boiler which was acting up could not be used safely. And they asked me would it be possible to operate the building with one boiler to which I answered, 'Yes.'

Q. You were told to open the school?

A. Yes, I was told to open the school." (522).

Mr. Kruszynski explained that he must operate both boilers in cold weather. Furthermore, even during non-winter months, it is

* Its opening had previously been twice delayed.

necessary to clean a boiler, during which time, the second boiler would have to be used.

Subsequent to this inspection, Mr. Kruszynski reported this condition on his punch list and also wrote the Board of Education about it. On all such occasions, he described this boiler condition as "hazardous" (523). Fortunately, this condition has not resulted in any accidents although there were two or three "near accidents" because of it. One occurred a "month or so" before the public hearing when a flareback "erupted" throwing a fire door open with great force. Luckily an electrician working in the boiler room was not close enough to the door when it blew open:

"... had he been close enough, in all possibility, he would have had a fractured skull even been killed." (524).

This defective boiler condition was reported to Fire Commissioner Cavanagh after it was brought to this Commission's attention at a private hearing. A Fire Department inspection resulted and the gravity of the condition was quickly confirmed by the inspecting firemen.* Mr. Kruszynski also was summoned to a meeting with other custodians at Fire Department Headquarters, which has already been discussed.** Among those present to hear these custodians report on their fire hazards was the Deputy Superintendent of Schools:

"BY MR. FISCH:

Q. At that Fire Department conference on April 26, was Mr. Weiss there?

A. Yes, he was.

Q. Did the Board of Education assure you that they would come to correct this condition?

A. Well, the Board of Education didn't actually direct anything towards me.

Q. Did it assure the Fire Department that these conditions would be corrected?

A. Yes.

Q. Has anybody been down to your school since that conference of April 26?

A. No one." (530).

* Mr. Kruszynski described the firemen's reaction when he started the boiler: "When it started up and it pulsed, they told me to shut it off and they ran out of the boiler room." (525-526).

** See p. 38, *supra*.

J.H.S. 142, Bronx, completed in 1958 at a cost of over \$3,500,000, was the subject of a thorough study made for the Commission by the Robert W. Hunt Company, a leading firm of consulting and testing engineers. Because of budgetary limitations and the cost of such surveys, the Commission decided to concentrate in depth on one particular school and to spot-check several other schools. J.H.S. 142 was chosen for the in-depth study. The custodian of that school, Joseph Coyne had prepared one of the largest and most detailed punch lists ever submitted.*

The report of the engineering survey contained a list of defects ranging from the serio-comic to those which constituted extreme hazards to the safety and welfare of the students.** Most disturbing was the discovery that in almost every instance these defects had been observed, noted, and reported by the custodian on his four month punch list and that nothing at all had ever been done about most of them.

Most serious in the long list of uncorrected defects and deviations from plans were two conditions which constituted serious fire hazards. In many rooms throughout the school there were both horizontal and vertical pipes four inches in diameter running through openings eight inches in diameter. Such openings permit the propagation of air draft, and in case of fire, would facilitate the spreading of such fire with great rapidity throughout the school. Within days after the custodian included this defect on his original punch list, his supervisor wrote him that the Bureau of Construction was to be immediately notified if the Fire Department placed a violation on the school. No steps were taken at that time to correct the fire hazard. Mr. Correale, head of the Bureau of Construction, wrote Deputy Superintendent of Housing Moskowitz on April 20, 1959 and advised his superior that he saw no violation in this type of construction. On June 16, 1959, Mr. Lehnert, the head of the Bureau of Plant Operation and Maintenance wrote Mr. Moskowitz:

"These openings constitute an extreme fire hazard since there can be no shutoff of the air supply to most of the rooms and between fire retarded walls.

"These openings should therefore be closed up with masonry and plastered over in accordance with the specifications.

"We therefore disagree with the Bureau of Construction and recommend that you again refer this matter to that Bureau."

* His vast effort, involving many hours of extra labor on his part, not only was not well received by his superiors, but in fact was a ground for criticism (224).

** A summary of all defects found by this engineering firm is found in Appendix B.

On June 29, 1959 the custodian again called attention to the fire hazard in a letter to the Superintendent of the Bronx Office, Bureau of Plant Operation and Maintenance. On September 25, 1959 the matter was directly brought to the attention of Mr. Weiss by Mr. Lehnert. Mr. Weiss' reaction was similar to that of his predecessors—he did nothing. On the punch list dated November 7, 1959 the custodian again listed the fire hazard room by room. Still nothing was done. Some time between that date and the date of the Commission's public hearing, the general contractor came into the building (unknown to the custodian)* and did a "patch job" in one of the worst rooms in the school, Room 101. This patch job consisted of stuffing paper into a space around the pipes and applying a superficial layer of concrete. Obviously this makeshift arrangement** could not last, and when heat was first sent through the pipes that winter, the patch job disintegrated (234).

The seriousness of these conditions as fire dangers was recognized by the Fire Department at an inspection conducted on January 27, 1961. The highest ranking officials of the Fire Department*** personally visited the school almost four hours**** inspecting these glaring hazards. They reported as fire violations the following:

"a) Horizontal openings about 8" x 24" at base of eleven partition wall separating twenty-two classrooms. In several of these walls were pipes, extending vertically, that had no sleeves or escutcheon shields. The fire hazard condition existing is one of communication from one room to another through the horizontal openings which are presently hidden by ornamental wood cabinets on either side of same.

"The fire hazard is also present by the openings around the pipes in the floor from any fire that might occur below.

"b) In thirty-six rooms the openings in the floors for the vertical leader pipes, which are encased in columns, are too large, which would permit smoke and/or fire from either below or above to extend through these openings.

* It is a requirement that no contractor do any work on the school premises after the school is opened without first checking with the custodian.

** Custodian Coyne described this makeshift arrangement as "indicative of the rest of the work they did there." (234).

*** Chief Fire Marshal Martin Scott; Deputy Chief of the Division of Fire Prevention Stephen J. Murphy; and Supervising Fire Marshall Vincent M. Canty.

**** The custodian's log book records their presence at the school from 1:30 to 5:10 P.M. (approximately).

- "c) In eighteen rooms of the rooms mentioned in (b) the pipe sleeves for the steam pipes and water pipes also are too large and the same fire hazard exists.
- "d) On the stage of the auditorium there are four electric plug-in boxes at the stage level. When the cover of these boxes are open and the female part of the outlet is exposed the hanging ceiling (which is about 5 ft. deep) is visible because the plug-in boxes are not protected against anything falling through them, landing into the hanging ceiling.
- "e) A ventilating duct which passes through the hanging ceiling of the lunchroom has approximately a 3" opening around the outside of same where it passes underneath the stage. For proper protection this should be covered with fire-retarded material.
- "f) In the concrete ceiling of the lunchroom are two electrical conduits which pass through an opening 5" x 14", leaving a large portion of this opening unprotected. The great danger here is that a cigarette or match or burning object might be dropped into that, setting fire to the hanging ceiling of the lunch room, burning there undiscovered for a considerable period of time, resulting in a large fire, or the reverse is possible—that a fire might originate in the hanging ceiling and extend to auditorium through these openings.
- "g) In the music storeroom, 1st floor, the cabinets are made of wood, and in the corner, concealed from view, is a 4 ft. x 3 ft. unoccupied space, enclosed by wood. There is a 5" circular opening in the concrete floor and a wooden horse left there by the contractors; also a 5" circular hole underneath cabinets along the opposite wall.
- "h) Throughout the basement in various rooms there are holes in the ceiling of various dimensions, which, in the event of fire could communicate fire to the upper floor, or possibly be the cause of a fire by someone dropping a lighted match or cigarette through same.

"NOTE: All of the violations noted can be eliminated by simply fire-stopping the openings with cement and by enclosing the horizontal openings with cinder block or firebrick."

On February 2, 1961, Deputy Superintendent Weiss himself, accompanied by three representatives of the New York City De-

partment of Investigation, inspected the school to check these fire hazards. In spite of these inspections, the condition remained unchanged as late as the Commission's public hearing (239-240).

Another fire hazard at J.H.S. 142, Bronx, was the absence of ventilation in the fuel oil storage room where two tanks, each containing 10,000 gallons of fuel oil, were kept. It too was reported to the Board of Education.

"Q. This is a fire violation, is it not?

A. Yes. There is supposed to be a means for air to enter and leave the room." (242).

At the public hearing Mr. Coyne discussed how easily the condition could have been alleviated:

"BY MR. OKUN:

Q. Has this ever been corrected?

A. No, sir.

Q. What is involved in correcting this, other than punching a hole in the wall?

A. Well, you would have to have an outside duct. They generally have an outside pipe or duct with a grill on it.

Q. This would not be a major undertaking to do it?

A. No, sir.

Q. And in your opinion, could you indicate how long it would take you to do it, if you would do it alone—if you had the privilege of doing it?

A. If I had the material and all, four hours.

Q. Four hours?

A. Yes.

Q. This condition has persisted, sir, for nearly three years?

A. Yes." (242-243).

Mr. Coyne's discussion of these fire hazards at the Commission's public hearing inspired yet another important dignitary to drop in at J.H.S. 142. On June 22, 1961—the day after Mr. Coyne testified—the Superintendent of Schools made a personal visit to the school. After he and two assistants were introduced to Mr. Coyne by the Acting Principal, Superintendent Theobald asked about the

hazardous conditions mentioned at the Commission's public hearing. The apparent purpose of Dr. Theobald's visit is reflected by the following entry in Mr. Coyne's official log book:

"Mr. Theobald asked me was I prepared to say the building is safe in regards to defects which were just showed them. I told him I was not."

As will be repeatedly shown, this attitude of sweeping warnings of unsafe conditions under the carpet was not an uncommon Board of Education practice.

At the Commission's public hearing, mention was also made of a fire hazard which had existed at J.H.S. 139, Bronx, a three million dollar, 1957 school. In November 1960, the custodian submitted a formal Request for Repairs of door hardware, pointing out that such request was necessary "for safety and security—please rush." A representative of the Commission visited the school on January 13, 1961, a Friday, and found several exit doors barricaded by wooden bars and wire (534). This fire hazard was created because the Board of Education had failed to repair the doors which the custodian secured to prevent unlawful entry. A follow-up visit by this Commission the next Monday disclosed that corrective work had been done *over the weekend*. This serious fire hazard—so easily removed—was permitted to exist for months until the Commission's interest in the condition became known to the Board of Education.

2. *Certificates of Occupancy*

A certificate of occupancy, simply stated, is the legal permission granted by the Department of Housing and Buildings of the City of New York to occupy a building structure, be it a home, business, theater, school, or any other type of premises.* Generally when a new building has been erected or extensive alterations made, this certificate must be obtained as evidence that the structure has been inspected and found to comply with the requirements of law and is safe for occupancy. Under certain circumstances, although all legal requirements have not been fully met, the law provides that temporary certificates of occupancy may be issued for periods of 90 days.** During this period, the owner of the premises is afforded the opportunity to remedy the existing deficiency which prevents issuance of a permanent certificate of occupancy. In the case of the Board of Education, these laws and regulations have been rela-

* The Administrative Code of the City of New York, Section C 26-181.0.

** The Administrative Code of the City of New York, Section C 26-182.

tively meaningless. Up to early 1960, when this Commission first directed specific attention to the Board's failure to obtain certificates of occupancy, the Board of Education had no regular procedure for dealing with this problem.

At the specific request of the Commission, Mr. John D. Saunders, Jr.,* the Board of Education employee responsible for obtaining certificates of occupancy, prepared a list of schools which lacked permanent certificates of occupancy.** As of January 26, 1961, approximately 25% of the schools built in the three preceding years were operating under temporary certificates of occupancy, and nearly half of these had been operating under temporary certificates for periods from one to three years. Over 20,000 students attended these schools daily.

The reasons for withholding such certificates of occupancy from these schools ranged from the neglect to make relatively simple tests to the continued existence of safety and health hazards. In the former instances the omission of a water sprinkler test delayed the issuance of certificates of occupancy for several schools. After spending many thousands of dollars to install such a protective device, the Board of Education could not find the time or interest to test it and to make sure that it operated properly prior to occupation of the school by students. Although the test itself might be a simple matter, it would be a most serious affair if the water sprinkler system was found not to be functioning properly or not functioning at all. Similar observations are in order concerning failure to test such items as auditorium curtains for fire-proofing properties. Other defects included cracked parapet walls, where for years the menace of loose and falling bricks prevented the issuance of permanent certificates of occupancy.***

In the New York School of Printing Trades, one of the largest schools in the entire City, there has never been a permanent certificate of occupancy since the school first received students in September 1958. At least two basic violations of the Building Code are currently responsible for this shameful situation. First, stairwell openings are smaller than the prescribed legal minimum; second, there are stairways without handrails or with improper handrails (448-50). Both conditions could prove to be extremely hazardous

* Mr. Saunders is Chief of Liaison.

** Although Mr. Saunders is also responsible for correction of all fire, labor and health violations for the nearly 1000 schools in the City of New York, until recently he was not provided with any assistance to discharge this monumental task.

*** At P.S. 251, Brooklyn a permanent certificate of occupancy had been unsuccessfully sought since April, 1957.

in case of fire, and even under ordinary circumstances they increase the chance of injury. Correction of these two deficiencies was finally scheduled after the Commission's public hearing, but as of October 1, 1961, no corrective work had yet been undertaken.

Some of the reasons for failure to obtain a permanent certificate of occupancy are related to inherent design errors made by private architects. In this connection, Mr. Saunders testified about the inadequacy of review of private architects' plans and the effect thereof. In many instances, State labor violations were filed against schools even when the private architects' plans were faithfully followed. This occurred because the plans did not comply with the requirements of those particular labor laws. Only two or three men were ever made available by the Bureau of Construction to review the thousands of detailed blueprints submitted by private architects. Requests for additional assistance always went unheeded (Pr. H. 4273-74), despite the obvious fact that the ultimate cost of correction dwarfs the cost of additional personnel, and in most instances this cost of correction was borne by the City.

Thus we have set by the Board of Education the deplorable example of a major city agency, housing over one million students and teachers daily, disregarding the very laws designed to insure their safety. In the place of extreme caution, which might be anticipated in dealing with our children, there was significant indifference.

3. Loose and Falling Roof Appurtenances

J.H.S. 141, Bronx, was completed in 1957 at a cost of \$3,075,856. This school, also known as Riverdale Junior High School, is considered a show-piece and was awarded the Architect's Prize for design (Pr. H. 6965). It is a source of great esthetic pride in the neighborhood. In January, 1959, while school was in session, nine aluminum coping covers, each approximately ten feet long and weighing, in the judgment of custodian John Butterfield approximately 40 pounds, were blown off the roof. One smashed a kindergarten window and another fell into the school yard (Pr. H. 6964). Miraculously, no one was hurt. The coping covers were replaced and refastened, after a fashion. Mr. Butterfield complained that they were not being properly secured but his pleas were ignored.

In January of 1961 Mr. Butterfield notified the Board of Education of two more loose coping covers. On February 17, 1961 he wrote to the borough office of Bureau of Plant Operation and Maintenance reporting fourteen additional loose covers on the various roofs of

the school. His letter recited the previous history of these conditions including his somber warning two years before that the covers were not safely secured. Mr. Butterfield's letter stated: "These pieces are about ten feet long and it is a marvel how no one was injured." (Pr. H. 6968). This letter of February 17, 1961 was accompanied by a formal Request for Repairs approved by the school principal with the following notation: "This should get immediate attention. It is an extremely dangerous condition." See Schedule 7, below.

The usual unproductive Board of Education inspection followed. In May 1961, in response to his telephonic inquiry of what was being done, Mr. Butterfield was told that a three day emergency bid was out for the correction of this dangerous condition. As its designation indicates, such a bid is reserved for conditions of an emergency nature deemed so serious as to require attention within three days. However, as late as June 22, 1961, when this was revealed at the Commission's public hearing, the condition remained the same (534).

SCHEDULE 7
Request for Repairs—J.H.S. 141, Bronx

Board of Education of the City of New York
Bureau of Plant Operation and Maintenance
Operating Division

REQUEST FOR REPAIRS

SCHOOL 141 BORO Bronx DATE 2/17/61
From To
CUSTODIAN John F. Butterfield Principal Boro Supt. Mr. Mangini

CLASSIFICATION OF TRADE

The following repairs are needed at this building

LOCATION	DESCRIPTION
Shop and academic building roofs	Secure stainless steel coping plates and re anchor same

APPROVED Nicholas Cicchetti
PRINCIPAL

This should get immediate attention. It is an extremely dangerous condition.
NC

At the Commission's public hearing Custodian John Clark described dangerous roof conditions at J.H.S. 263, Brooklyn.* The normal pattern of complaints by the custodian, entreaties by the principal and callous lack of concern by the Board of Education occurred here. On October 6, 1958, when the new principal, Mr. Irving Robbins, took over the school, he wrote a long letter to Diedrich F. Lehnert, Superintendent of Bureau of Plant Operation and Maintenance, about loose slate slab copings over the Blake Avenue entrance which were in danger of falling. Mr. Clark stated that these slabs weigh approximately 100 to 150 pounds (333). The principal's letter produced no results. Refusing to permit such a dangerous condition to continue and recognizing the futility of awaiting Board of Education action, Custodian Clark felt compelled to remove some of the loose slabs himself. On May 9, 1961, almost three years after this extremely hazardous condition had first been reported, Mr. Robbins again wrote to the Board of Education, addressing his letter to Deputy Superintendent Joseph R. Weiss, requesting correction of the coping condition which by now had become worse. In his letter he pointed out that copings were loose not only over the entrance but over other parts of the building. Again nothing was done (334).

This \$2,500,000 school was not limited to a single roof hazard. On September 21, 1955, about one month before the school officially opened for students, Principal Elizabeth C. O'Daly wrote Dr. David Moskowitz, Associate Superintendent, concerning the construction of her new school. Although as principal she had no responsibility for the technical aspects of construction, she, like many of her colleagues, assumed that the Board of Education would welcome constructive suggestions designed to make a school more habitable and safe for its students. In her letter she pointed out that the hoods covering the ventilating system motor located on the roof were loose and could easily be blown off by a strong wind. She suggested another method to make them more secure. This was but one of several recommendations contained in the principal's letter, all of which had been submitted after discussion between Mrs. O'Daly and Custodian Clark. One month later the very thing warned about happened as described by the custodian at the public hearing:

"THE WITNESS: There was a gale and one of the covers came off and she was going to go down to Sutter Avenue. Well I had an assistant with me, and we got it, we managed to get

* J.H.S. 263 was constructed at a cost of \$2,554,908 and opened on October 27, 1955.

it over into the corner away from where the wind could get up underneath it, because if it would go down in the street, it would kill somebody.

BY MR. TAUBER:

Q. Did you find that these motors were insecurely fastened, and didn't have the proper bolts and screws?

A. Yes." (334-335).

4. *Collapse of Ceilings*

Shoddy workmanship and apathy by the Board of Education to reported construction defects have not been limited to new schools. The 1954 half-million dollar modernization of P.S. 157 in Brooklyn is one example. Part of the work to be included was a complete waterproofing of the roof over the auditorium. The results are best illustrated by the following photographs taken on May 12, 1961 which portray the auditorium ceiling.

This serious state of affairs existed since 1959, when the school was inspected by representatives of the Board of Education. As a result of this inspection the auditorium was closed after November, 1959, depriving the school of the use of these necessary facilities. Custodian Clarence Kane discussed this at the Commission's public hearing:

"Q. In November of 1959 is it true that Mr. Lehnert and Mr. Coonan visited the school?

A. Yes.

COMMISSIONER GRUMET: When?

MR. TAUBER: November of 1959.

BY MR. TAUBER:

Q. Did they have to close the auditorium?

A. Yes, sir.

Q. Has the school been without the use of the auditorium since that time?

A. Yes, sir.

COMMISSIONER GRUMET: From November 1959?

THE WITNESS: Yes, sir.

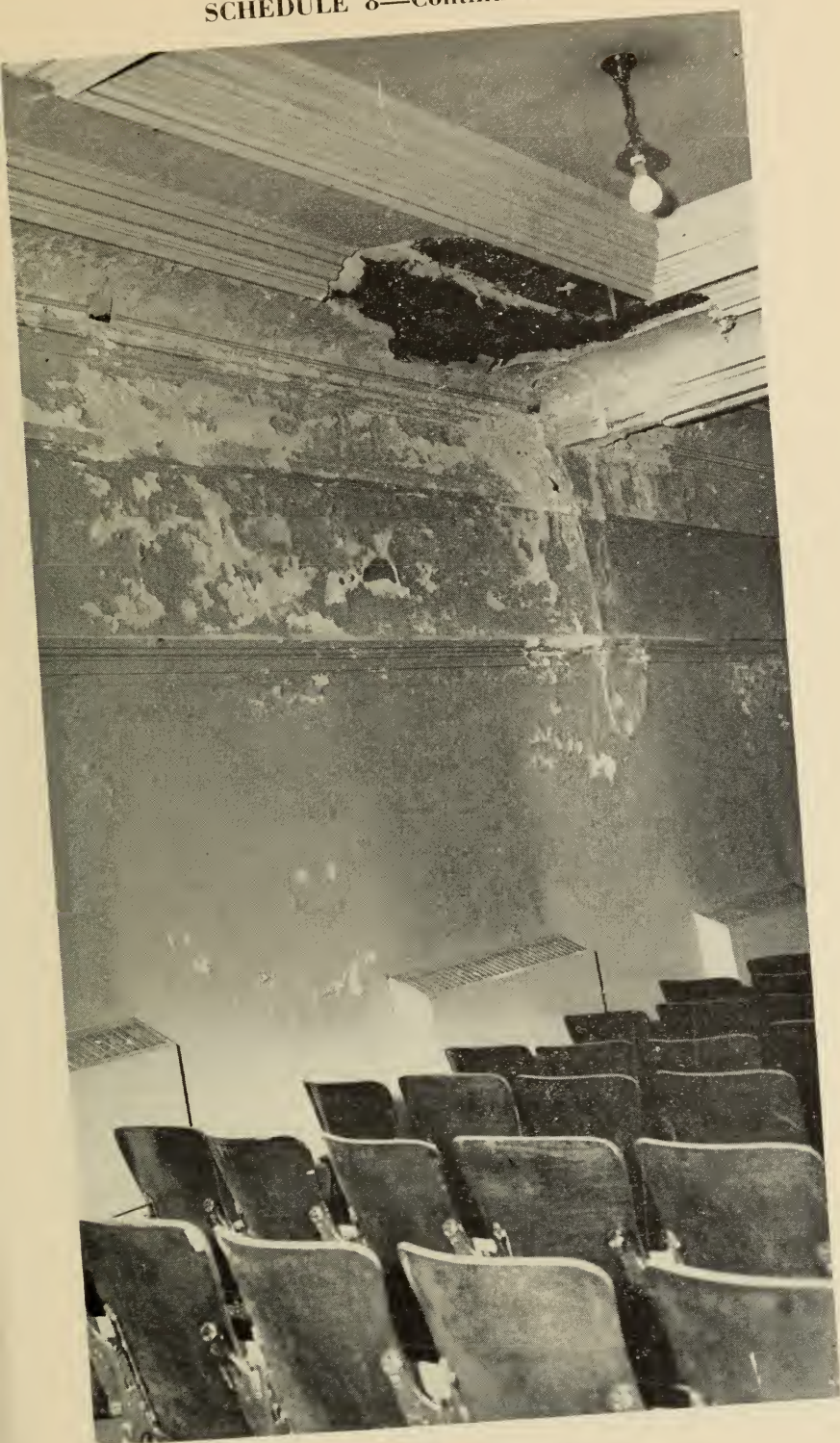
Q. Why was the auditorium closed?

A. It was in a dangerous condition. It was terribly dangerous. I asked for them to close it." (383-384).

SCHEDULE 8

Photographs of Auditorium Ceilings—P.S. 157, Brooklyn





SCHEDULE 8—Continued



SCHEDULE 8—Continued



On May 11, 1961 Mr. Kane was visited by Special Agents of this Commission who were shown the auditorium condition. Later that day he was examined at a private hearing at the Commission office. Approximately two weeks later, Dr. Charles Silver, President of the Board of Education, and Mr. Joseph Weiss, Deputy Superintendent of Schools, visited the school, at which time Mr. Silver referred to the condition as "the crime of all crimes."* Custodians were required to report to their superiors all visits to this Commission. Therefore the Board of Education on or about May 11—approximately two weeks before the visit of Dr. Silver and Mr. Weiss—knew of this Commission's specific interest in P.S. 157. During the almost two years that the school was deprived of the use of its auditorium, no corrective work was undertaken. It was only after the visit by Commission agents that constructive action was begun. Furthermore, the Board of Education had been on notice of this condition prior to the November 1959 inspection, for between May 6, 1959, and May 9, 1961 a total of twenty-two letters were written (385). But apparently this barrage of correspondence could not penetrate the Board of Education's citadel of indifference. One letter from the principal dated November 13, 1958 was not even answered until December 10, 1959, thirteen months later (386).

Custodian Kane testified that the Board of Education finally "started" corrective work about a week before the Commission's public hearing (386-387).

One of the most expensive new schools which was the subject of testimony at the Commission's public hearing was the Bronx High School of Science, constructed in 1959 at a cost of over seven million dollars. The danger of imminent collapse of the tile in the ceiling of the cafeteria made it necessary for custodian Charles H. Haughey to remove some of the loose ones. The beginning of this condition was observed by the custodian as soon as the school opened, when he noticed water leakage in the cafeteria ceiling. This was reported on his four and ten month punch lists.

Subsequent to this submission of the custodian's punch list, the principal, Mr. Alexander Tappel, complained about this condition to Deputy Superintendent Weiss. In his letter dated December 23, 1960,** Mr. Tappel stated:

"Dear Mr. Weiss:

"There is a water leakage problem that has plagued the school from its opening two years ago and doesn't seem to be

* *New York Times*, May 30, 1961, p. 1. Deputy Superintendent Weiss added: "Somebody failed to do his job properly."

** Introduced at the public hearing as Commission Exhibit #43.

approaching correction. The most serious aspect of this situation is in the lunch room, where water seeping through the ceiling has loosened many tiles and forced their removal for safety's sake. At the same time, the water is rusting the metal lathes and may be attacking the electric conduits lodged in the hollow spaces above the ceiling. We are particularly concerned about the loosening of the tiles, which may fall and endanger the hundreds of students who are present in the lunch room daily and as well about the possible shortcircuiting effects on the electrical fixtures from wetting.

"There are other leaks that permit the entry of water into the building, which are also long overdue for correction.

"In view of the dangers involved to our students and staff, and in view of the fact that this condition is already two years old, I am urgently requesting your help in correcting this situation."

No reply was ever received to this letter (510) and the condition described therein and revealed by Schedule 9, p. 64, is the condition as it exists today:

"COMMISSIONER GRUMET: It has to be constantly watched?

THE WITNESS: Yes.

COMMISSIONER LANE: From the appearance of the picture, the condition seems to be a progressive one.

THE WITNESS: Yes, it is.

THE CHAIRMAN: In other words, it is due primarily to leakage going under there and weakening the tiles?

THE WITNESS: Yes, sir.

COMMISSIONER GRUMET: That is a constantly dangerous condition?

THE WITNESS: Yes, it is.

COMMISSIONER LANE: Has anybody been hit in the head by one of those tiles?

THE WITNESS: Fortunately, no, no one has ever been injured.

COMMISSIONER GRUMET: That is only by chance.

THE WITNESS: That's true." (512).

SCHEDULE 9

Photograph of Cafeteria Ceiling—Bronx High School of Science



Mr. Haughey also testified that other areas are being affected in a similar way by seepage, namely the machine shop room and the science technical laboratory and that this condition has continued uncorrected since the school opened (513).

It was pointed out at the public hearing that Mr. Carl Peterson, Chief Engineer of the Board of Education, in August of 1959 notified the general contractor about this condition in the cafeteria and other rooms. The general contractor replied that it was the responsibility of the architects.* Mr. Peterson wrote the architects one year later and they disclaimed responsibility. Voluminous correspondence, fruitless inspection and buck-passing followed, but nothing was accomplished by way of correction.

Commissioner Grumet expressed his reaction to this spectacle:

"COMMISSIONER GRUMET: I'd hate to bring the Russians in here and show them what our schools of science look like." (514).

J.H.S. 142, Bronx, the subject of a complete physical survey by a firm of engineers retained by the Commission, had parts of its auditorium ceiling collapse on two occasions (243). Before the incidents, Custodian Coyne noted the construction defect and reported it on his ten month punch list (244). The condition was also called to the attention of one of the highly placed members of the Bureau of Construction, Leonard Doran, then head of the Punch List team. He promised to take remedial action. In typical fashion of this Bureau, nothing was done until there was a second collapse. During the second collapse, a cinder block weighing twenty-five and one-half pounds fell from the ceiling to the auditorium floor. Fortunately, the acoustical ceiling retarded the fall of this cinder block, and it did not immediately fall to the floor. The auditorium was "full to capacity" at the time the block fell to the acoustical ceiling, but all the children were safely evacuated before the block actually fell to the floor.** A photograph of the type of cinder block which fell follows in Schedule 10, p. 66.

The custodian described the disastrous consequences that might have occurred:

"COMMISSIONER LANE: Someone might have been killed?

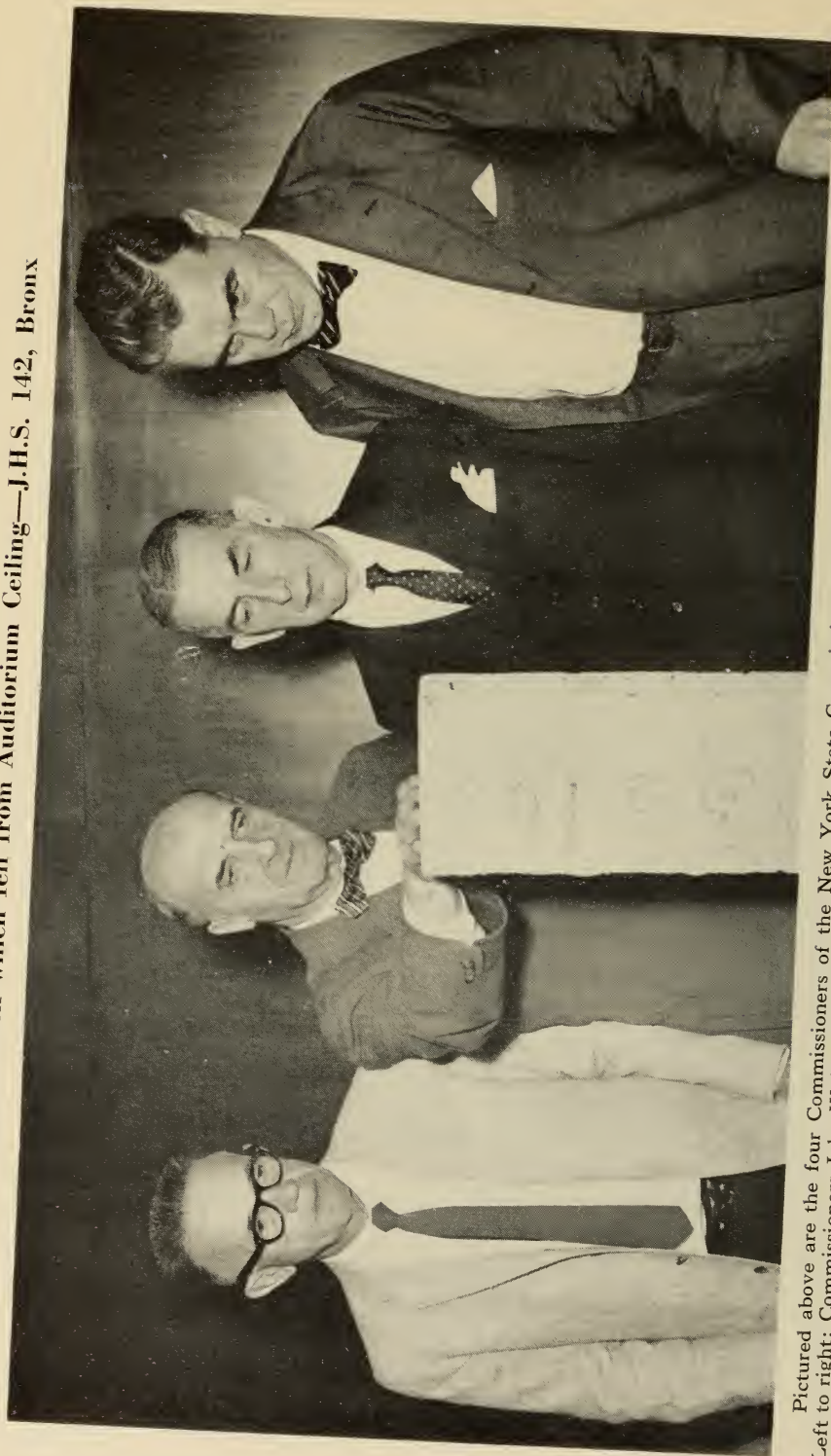
THE WITNESS: Yes, sir. No getting away from it." (248).

* The architects' fee for designing this school was \$310,000.

** Although only one block actually fell, 16 were loose at the time the auditorium was in session.

SCHEDULE 10

Cinder Block which fell from Auditorium Ceiling—J.H.S. 142, Bronx



Pictured above are the four Commissioners of the New York State Commission of Investigation examining the cinder block which fell.
Left to right: Commissioners John W. Ryan, Jr., Goodman A. Sarachan, Jacob Grumet, Myles J. Lane.

Although there was blasting in connection with the construction of a nearby parochial school at the time of the second collapse, the Board of Education inspectors who examined the situation all agreed that there would have been no collapse by virtue of that blasting if the work had been properly performed in the first instance (Pr. H. 11,701-11,705).

5. *Cracked and Loose Walls*

A major problem with loose brick on a parapet wall arose in P.S. 172, Queens, shortly after the school was opened. The highest Board of Education officials recognized that it represented a major hazard to pedestrians, in that pieces of brick were actually being dislodged by virtue of poor design or construction. The four photographs represented in Schedule 11, pp. 68-71, provide graphic evidence of this condition.

Approximately five years after inception of the condition, the Board took corrective action.

P.S. 138, Bronx, a 1958 school, has already been discussed under the subject of fire hazards.* Another dangerous condition which was noticed by the custodian, Joseph Oldak, and which went unchecked for over one year was described at the public hearing:

“BY MR. FISCH:

Q. Mr. Oldak, subsequent to the second punch list, did you notice a serious condition around the walls and parapet of your school?

A. Yes, sir.

Q. Did you report this to the Board of Education?

A. I did.**

* * *

Q. Did anyone ever come down to correct that?

A. Recently.

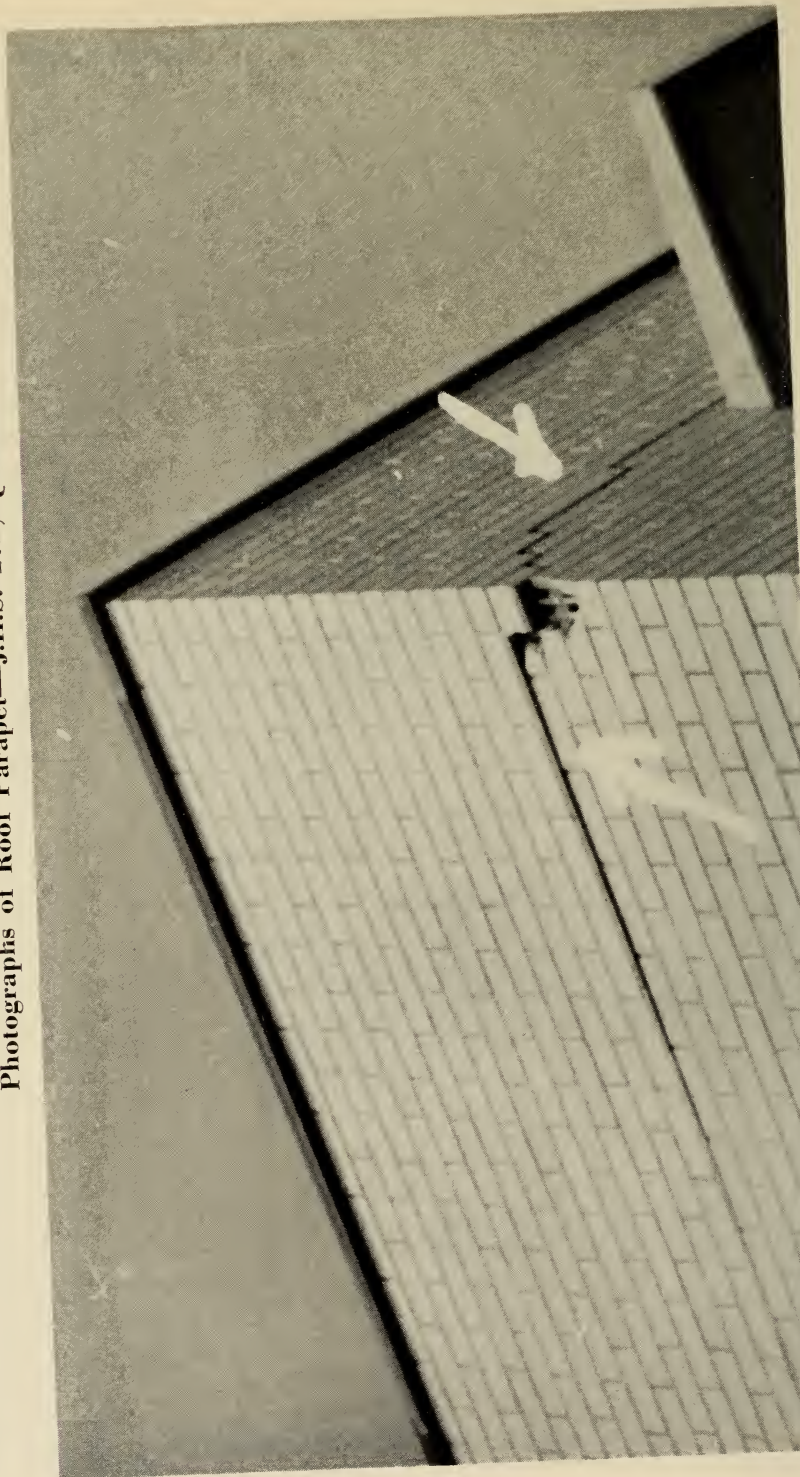
Q. When you say ‘recently’, how long is that?

A. In two weeks.

* See p. 44.

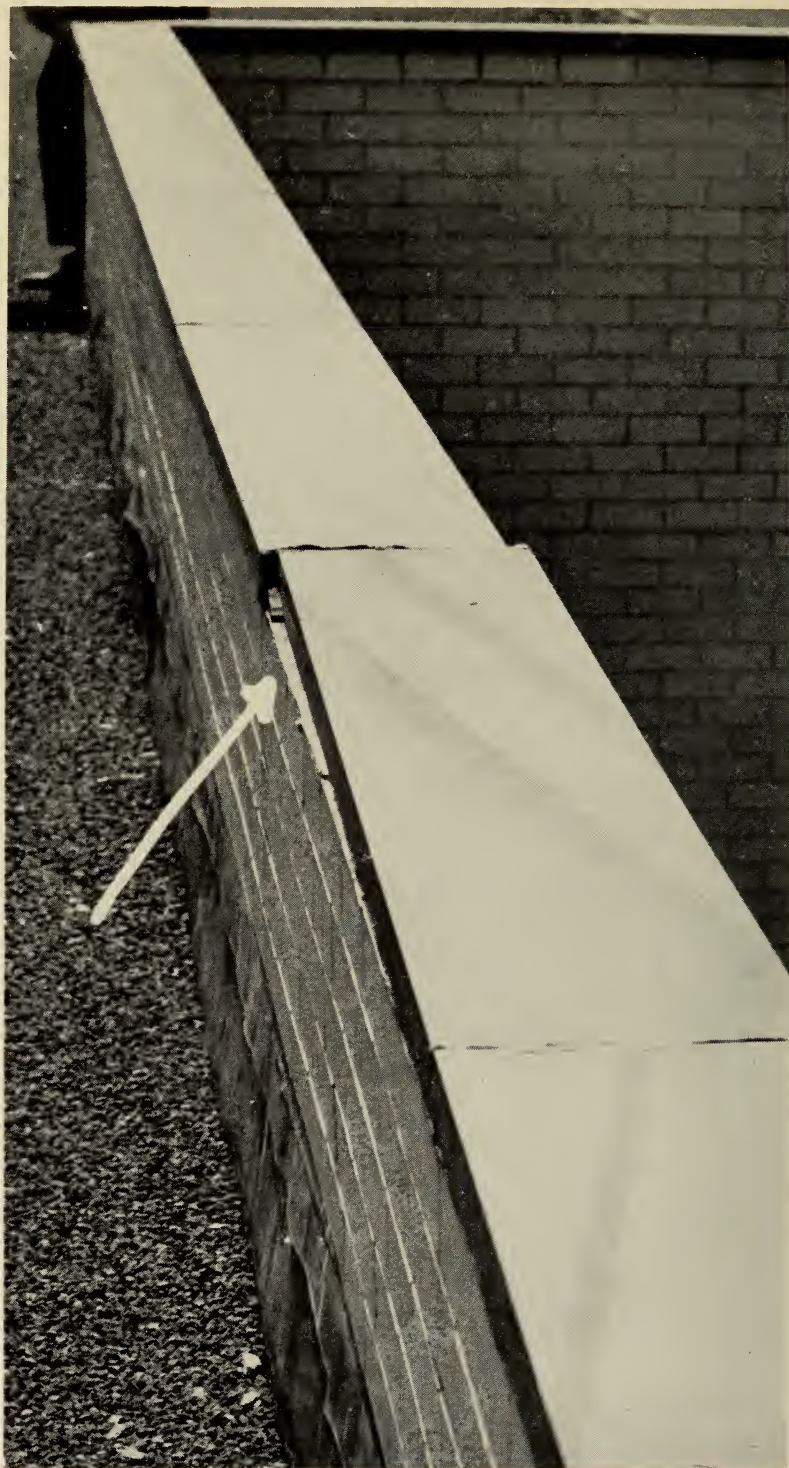
** Mr. Oldak wrote the Borough Superintendent on May 6, 1960 as follows: “Gentlemen: Please make a survey concerning a severe wall crack on south side (roof and west area).” This letter was introduced at the public hearing as Commission Exhibit #15.

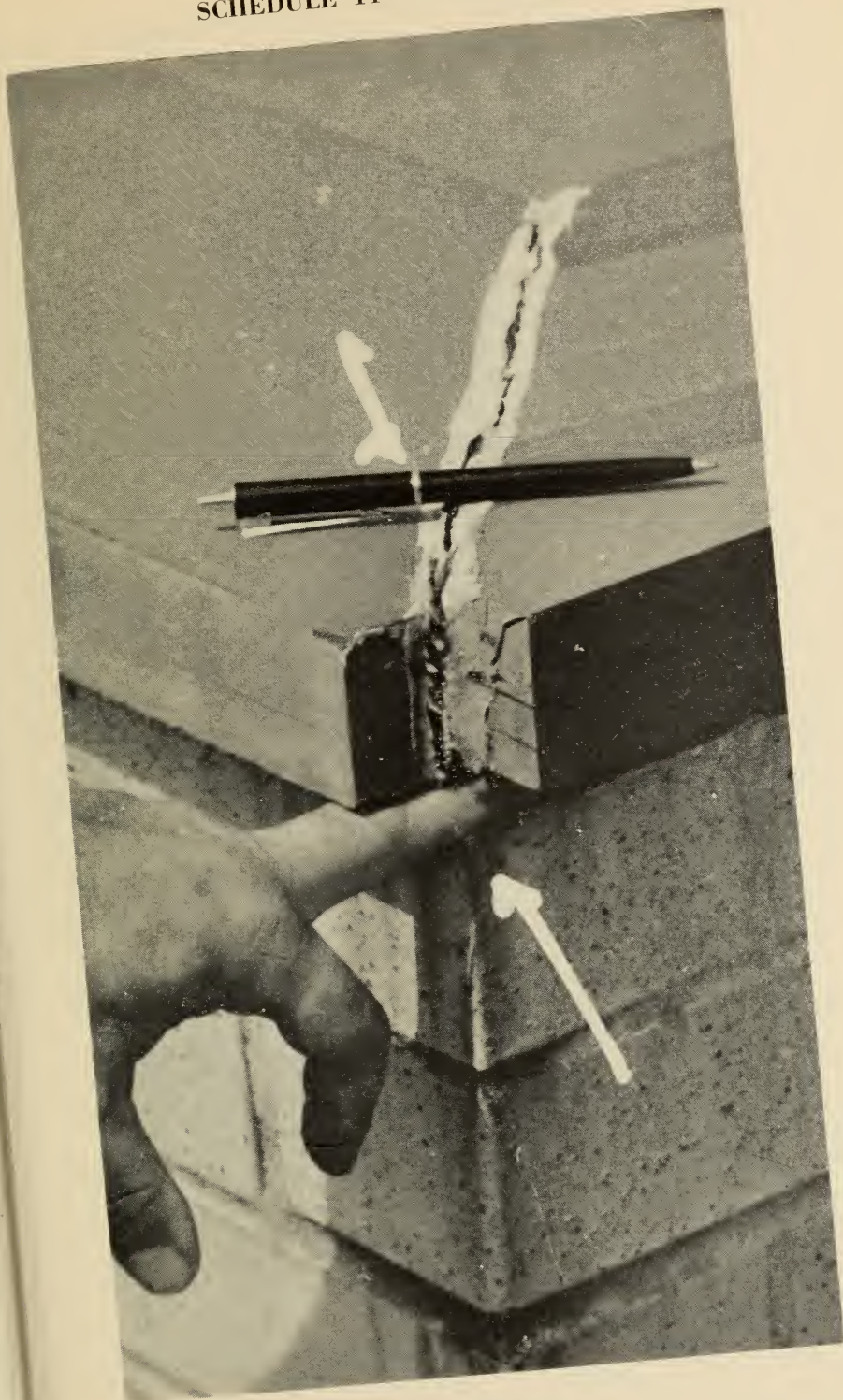
SCHEDULE 11
Photographs of Roof Parapet—J.H.S. 172, Queens





SCHEDULE 11—Continued





THE CHAIRMAN: Within the last two weeks?

THE WITNESS: Yes.

Q. What danger does this condition represent?

A. As time goes on, the wall area in these areas are being pushed aside from the roof and will fall.

Q. It will definitely fall?

A. Yes, sir." (279-280).

Mr. Oldak went on to say that below these fractured wall areas are sidewalks and other school property where children congregate (280).

The parapet wall condition was first brought to the Commission's attention when Mr. Oldak appeared at a private hearing in March of 1961. On that occasion Mr. Oldak also complained about the warped doors in his school which constituted an extremely serious fire hazard. On April 21, 1961 the Commission wrote to Fire Commissioner Cavanagh addressing his attention to the conditions at P.S. 138 and other schools. Inspections by the Fire Department were conducted a few days thereafter, and a School Inspection Report was sent to all appropriate Board of Education officials. In this report the Fire Department listed other conditions which, though technically not fire violations, were in their judgment serious enough to be brought to the attention of the Board of Education for correction. One such item was the parapet wall condition which appeared on the Fire Department report* as follows:

"3. Loose brick-work shows at roof parapet wall over the Lafayette entrance to school. This condition should be given prompt attention. Falling brick could result in injury to teachers or pupils entering or leaving school."

In May, 1961 this Commission engaged a firm of professional engineers to test particular structural conditions at various schools. The parapet walls plus other matters about which Mr. Oldak had testified at the private hearing were included in the items for this professional engineering survey. It was only after the Commission's examination of Mr. Oldak at the private hearing, the Commission's letter to the Fire Department on April 21, 1961, and a visit to the school by the engineers retained by the Commission that the

* Introduced at the public hearing as Commission Exhibit #17.

parapet wall cracks were ever examined by representatives from the Board of Education, despite the fact that it had been brought to their attention by Mr. Oldak in his letter of May 6, 1960.

Mr. Sterling J. Talbot, a professional engineer employed by the Robert W. Hunt Company, Consulting and Testing Engineers, testified at the public hearing about this condition. Inspections and tests by this firm revealed that one of the expansion joints in the parapet was omitted and that there was "extensive cracking" on all four corners of the parapet wall. The function of an expansion joint, he explained, is to prevent stresses in the masonry due to expansion caused by temperature changes. Mr. Talbot described other non-compliance with the plans:

"... In addition to the fact that one of the expansion joints was omitted, all but one of the other expansion joints did not extend the full distance to the line at the top of the windows, as called for in the plans.

Q. The plans called for the extension of the joint down from the roof to the top of the window?

A. Yes. The line at the top of the main windows.

Q. Your inspection disclosed that the joint did not comply with the plans?

A. Yes. I think you can see it quite clear here, that it extends only down to where this crack appears in the brick work." (208).

In order to remedy the situation, Mr. Talbot stated that it would be necessary at "considerable cost" to remove and replace all the brick work above the cracks, extend the expansion joints properly, and install the one joint that was omitted. Unless corrected, the condition would get progressively worse because:

"Any water could get in cracks in masonry in the winter-time and freeze and it will tend to expand and enlarge the crack to worsen the condition." (210).

Another school which unfortunately was plagued with both a serious fire hazard* and a dangerous wall condition was P. S. 50, Richmond. That school was opened in 1957 by custodian Anton V. Kruszynski. At a private hearing on March 10, 1961, Mr. Kruszynski complained about dangerous conditions at his school and his

* See p. 45.

lack of success in arousing the Board of Education to action (Pr. H. 6,343-350). Consequently, this Commission wrote Fire Commissioner Cavanagh and an inspection of the school in April confirmed Mr. Kruszynski's complaints. In addition to a defective boiler in danger of exploding, the Fire Department school inspection report listed, under "Non-Fire Department Violations," the following:

"Curtain walls in girls' shower room defective; tiles are loose. Shower facilities are roped off and not used."

This condition had been brought to the attention of the Board of Education by the custodian within one year after the school opened. Temporary correction was ostensibly made but the condition recurred (Pr. H. 10,383). Because of this loose curtain wall the facilities have not been used. Mr. Kruszynski discussed this at the public hearing:

"Q. The facilities are not used? For how long have they not been used?

A. The facility has not been used since the opening of the building.

COMMISSIONER GRUMET: What facility?

THE WITNESS: It is a curtain wall which closes the showers. It gives privacy. That's in the girls' shower room.

MR. FISCH: It is in danger of falling.

COMMISSIONER GRUMET: The showers have never been used?

THE WITNESS: That's right.

COMMISSIONER GRUMET: How long has that been going on?

THE WITNESS: Since the opening of the building.

COMMISSIONER GRUMET: How long is that?

THE WITNESS: February 10, 1958." (526-527).

Another school which was publicly discussed at the Commission's public hearing and which suffered from many structural defects was J.H.S. 263, Brooklyn,* completed in 1955. A condition similar to that in P.S. 50, Richmond existed in that the tile partitions in the girls' shower room collapsed. Custodian John V. Clark notified Mr. Lehnert of the Bureau of Plant Operation and Maintenance

* See p. 42.

nance of the condition in a letter dated December, 1955* as follows:

"Dear Mr. Lehnert:

"At 12:15 P.M. on September 21, 1955, two tile partitions collapsed in the girls' shower room of J.H.S. 263 (K). At this time two sheet metal workers were engaged in installing parts of the ventilating system in the same room.

"These partitions were six feet high, 56 inches wide and four inches thickness, constructed of tile blocks. No one was injured.

"May I suggest that all of the remaining partitions be tested as I fear when in use by pupils the water will also weaken in the joints in these tiles. A serious accident would be the result."

Because of this letter the partition which had collapsed was rebuilt, but the custodian's advice concerning the testing of the other tile partitions was ignored. It has been customary for the Board of Education summarily to brush aside warnings of custodians and principals as well as its own inspectors** concerning potentially unsafe conditions. As will be demonstrated on page 79, good fortune has not always protected the Board of Education from serious consequences befalling the users of these neglected schools.

6. *Loose Windows*

To achieve its much heralded façade of quantitative accomplishment in new school construction, the Board of Education has accepted inferior materials and approved incompetent design rather than delay a school opening. J. H. S. 180, Queens,*** P. S. 50, Richmond**** and P. S. 2, Bronx, are but a few examples. The latter school was opened in 1954 at a cost of \$1,664,200.

For several years prior to the opening of the school, the Board of Education had been in contact with the general contractor concerning approval of the latter's aluminum windows for installation at the school. As was customary at that time, products were inspected prior to installation to assure contract and specification compliance.

In a letter dated June 10, 1953, Mr. Correale, Director of the Bureau of Construction, notified the general contractor that an in-

* Introduced at the public hearings as Commission Exhibit #25.

** See p. 91.

*** See p. 85.

**** See p. 46.

specification of the sample aluminum windows disclosed many defects for which reason the windows were unacceptable, until corrected. Upon being later advised that the windows were corrected, an inspection was made on October 26, 1953, which revealed that the windows still did not meet specification requirements.

On November 23, 1953, Mr. Correale, by letter, informed the general contractor that the Board of Education, after investigation, was rejecting the contractor's claim that the windows were up to specifications. The very detailed inspection reports indicated serious omissions and defective items, including the absence of reinforced steel, improper welding, and poorly fitted joints. Nevertheless, in spite of this, Mr. Correale in a letter dated November 23, 1953 informed the general contractor that

"... because of the urgent need of these windows at the project and in order not to delay the progress of construction, we will accept these windows with the understanding that they are only being accepted because of their required urgency and is not to be taken as an acknowledgment that this window meets the specifications nor will be accepted in the future."

The letter also stated that a credit would be taken for failure to adhere to specification requirements. The not unexpected protest from the contractor followed. On January 4, 1954, the contractor was notified of another inspection (on December 29, 1953) which disclosed defects in addition to those previously reported.

On February 10, 1954, Mr. Correale wrote to the general contractor reciting the past history of inspections and informing the contractor that the windows still did not meet specifications but were being accepted in order to "promote the work." A \$10 credit per window was to be taken.

On October 29, 1954, custodian John J. Cleary was notified that a student in opening a classroom window, had pulled the entire window sash out of its frame but fortunately was not injured. Mr. Cleary replaced the sash in its frame, notified the Board of Education, and advised the teachers not to allow children near the windows. The following day a window cleaner, ignoring Mr. Cleary's advice to stay away from the window because it was dangerous, attempted to clean it on the inside and it again fell out of its frame. Because these windows were unsafe, the New York State Department of Labor, Division of Safety, on December 3rd notified Mr. Cleary that the windows were not to be cleaned.

On December 29, 1954, Mr. Vincent Iarrobino, Senior Architect and Chief of the Change Order Department was asked by Mr. Correale to visit the school and inspect the windows. His report follows:

"December 29, 1954

TO: Mr. Correale

FROM: V. Iarrobino

SUBJECT: O. H. Aluminum Windows—P.S. 2—Bronx

Complying with your request, I submit the following:

WINDOW FRAMES

Sectional area of jambs and mullion—below requirements; corners now welded. Mullions frail and poorly assembled. Excessive lateral deflection causing sash to become disengaged and fall inward or outward, constituting a hazard to life and limb. Show Drawing #8 of 16, approved 6/22/? called for a $\frac{1}{8}$ ' thick U-shaped steel continuous in mullion. (This was a correction made to the shop drawing.) Due to excessive deflection of the mullion there is reason to believe that this steel reinforcement was not installed. (This phase of construction should be investigated.) The mullion is made in two aluminum sections, interlocked on the long axis and held together by tap screws about 18' o.c. These tap screws will eventually become loose causing the mullion to become loose and unsteady. There is another set of shop drawings approved by this office on July 2, 1953 (this is a subsequent approval) on which the reinforcement indicated in the mullion in previous approval is not indicated—which approval governs? On the exterior, over the caulk joint at masonry, the original approval called for an angle scribe moulding; on the final shop drawings approval this scribe moulding is not indicated. There is no angle scribe moulding in the installation.

Frames are made with fixed parting strip and fixed sash stop. Without a removal parting strip and sash stop, the sash has to be made $\frac{1}{2}$ " narrower in width than the width of the frame, measured from pulley stile to pulley stile, in order to permit its installation. The sash is installed by inserting one side tight against the pulley stile in order to clear the parting strip on the opposite side. Obviously, the sash may be removed by a similar operation. With this type of window design it is possible, when lifting either sash to shift fully to either side and fall out of the frame. This has already happened

in C. R. 224 when a pupil tried to open the bottom sash. This condition, I believe, constitutes a serious hazard and should be corrected without delay.

SASH

Structurally frail—corners of sash not welded and reinforced with steel as required. Glazing bead not interlocked, but held in place by putty. Meeting rail of bottom sash and top rail of top sash made weaker by the cutting of hold therein at center line for insertion of prommet for pole operation. Said rails, where sash is operated by pole, bend away from the glass or exert pressure thereon, depending upon which direction the sash is moved. The sash lock and keeper is cheap construction and practically useless.”

Following Mr. Iarrobino’s inspection and report, some “corrective” work was done on the windows. Mr. Iarrobino testified at a private hearing on June 12, 1961 concerning the above described history of the windows. In spite of the fact that a near accident had occurred twice, and apparently ignoring Mr. Iarrobino’s articulate warnings about the danger involved, complete correction was never made.

Mr. Iarrobino stated that some work was done “in a fashion” to alleviate the condition but that this was inadequate because the tap screws applied would eventually loosen and fall off. Regarding the other recommended steps, he testified as follows:

“Q. You mentioned that this condition—I am quoting—‘This condition, I believe, constitutes a serious hazard and should be corrected without delay.’

A. That’s correct.

Q. Do you know if that condition was corrected, Mr. Iarrobino?

A. With respect to making the parting strip and the window stop removable, that was not done.

* * *

Q. You mentioned also the lack of reinforced steel. Do you know whether that was ever corrected?

A. To the best of my knowledge, no reinforcing steel was installed.

Q. Therefore, a hazard to life and limb still exists if that is so?

A. It is a matter of opinion.

Q. In your judgment?

A. In my judgment, I would say yes."

Mr. Iarrobino further testified, as he indicated in his report, there was never an approved sample although one is always required (Pr. H. 13,698). After the near accident and Mr. Iarrobino's inspection and report, he visited the school again with the Chief Engineer of the Board of Education, Mr. Peterson, and Mr. Alperin of the Comptroller's office. This was at the time the ostensible correction was begun to the dissatisfaction of both Iarrobino and Alperin (Pr. H. 13,701). However the Chief Engineer adopted the view that this was "the best solution under the circumstances"—a view apparently induced by "pressure because of the fact that it was near the time for the school opening" (Pr. H. 13,701-2).

Mr. Iarrobino was asked to evaluate the Board of Education's explanation for accepting non-specification windows:

"Q. Based on your experience with the Board of Education, would you say that they had ample time to get a good window, a safe window?

A. If the work is properly coordinated it should be.

Q. If the work is properly coordinated, there would be no excuse for something like this?

A. There shouldn't be any excuse. There shouldn't be any excuse. No." (Pr. H. 13,696).

As the file indicates, there was never any doubt that what the Board of Education was accepting was a window which had been disapproved on three occasions because it did not comply with the specifications. Furthermore, the defects as reported were of such a nature as to indicate that such an accident was likely (Pr. H. 13,706).

7. Serious Accidents

Although the Commission concentrated on the construction of new schools, the following incident was brought to its attention and is therefore reported here. Even though the school was an older one the events occurred during the administration involved in the Commission's inquiry and dramatically illustrate the consequences of the Board of Education's refusal to heed warning of dangerous school conditions. The school involved is P.S. 19, located in the Williamsburgh section of Brooklyn.

On November 1, 1956, custodian Daniel Conlin wrote Superintendent of Custodians A. Maher concerning several "hazardous conditions" existing at the school including the parapet wall on the roof: "They are in such a position that they could fall to the street and schoolyard." Mr. Conlin's letter stated that the Building Inspector had been notified and that Specification #264 had been written to correct the conditions but that no work had been done. On February 6, 1957, Mr. Lawrence B. Coonan, Brooklyn Borough Superintendent of the Bureau of Plant Operation and Maintenance, visited the school, and again was apprised by the custodian of the hazardous conditions including the parapet walls, dangerous windows were unsafe and referred to earlier letters and visits. Mr. Conlin Superintendent of Maintenance D. F. Lehnert concerning the school and referring to "Spec. #264—1955/56" (the date the work specification had first been written). Mention was made of a decision by the Budget Director and the Division of Housing to the effect that no additional funds should be expended on P.S. 19 "except to protect the health and safety of the occupants". The reason given was the contemplated future replacement of the building. Mr. Coonan stated that according to reports from the custodian division and the inspectors, the work incorporated in Spec. #264 should be authorized as necessary and falling within the "health and safety" requirement of the Budget Director and Division of Housing. On May 23, 1957, Mr. Conlin again wrote Mr. Maher, "Subject—Hazardous Conditions". He reiterated that the parapet walls and windows were unsafe and referred to earlier letters and visits. Mr. Conlin at a private hearing on March 27, 1961 explained why he felt it necessary to repeat his earlier warnings:

“Q. You repeated this because you didn’t—weren’t getting any action?

A. I wasn’t getting any action. I was getting nervous, let us put it that way. The building inspector was nervous also.

Q. Which building inspector is that?

A. Mr. Sieburt.

Q. That is Richard Sieburt?

A. Yes, Dick Sieburt. In this letter—

Q. Why were you getting nervous, because the things were dangerous and nothing was being done?

A. Yes, I would say, yes. Actually—

Q. What was the age of the children at the school?

A. It was a kindergarten to sixth grade school.

Q. The parapet walls being in danger of collapsing was only one of the hazards?

A. Yes." (Pr. H. 7676-7677).

On September 13, 1957, while school was in session, a window fell out of the fourth floor of the school and struck a pupil who was in the schoolyard below. The child was seriously cut and was rushed, bleeding, to the hospital. On September 24, 1957, Mr. Coonan sent an Accident Report to Mr. Richards and again stressed the urgency of removing the remaining hazardous conditions. In his report he quoted from the investigation of the accident by the Board of Education Inspector, R. Sieburt:

"The child was seriously hurt but will recover. This accident goes to point up the extremely dangerous condition that exists."

Inspector Sieburt's report warned that there were "Fire Department, Labor Department and Health Department violations . . . that should be removed as soon as possible." He listed work necessary to remove the "unsafe and hazardous conditions that remain," including replacement of the parapet walls, roof, windows and frames, etc. The inspector's report concluded with the following admonition:

"It is of the utmost necessity that speedy action be taken to rectify the above mentioned conditions and remove the hazards. One child was hurt this time. The next accident might involve the *lives* of other children."

Mr. Coonan's Accident Report emphasized that major repairs were "imperative" and recommended that Specification #264—1955/56, the inspector's report, and his previous letter of February 21, 1957 be given "full consideration." Mr. Coonan's letter ended with the following sentence: "Unless some appropriate action be taken on this building, we may find the Board of Education being severely criticized." Not even the near-fatal disaster was sufficient to awaken the Board of Education from its smug cradle of lethargy. On October 17, 1957, in a letter titled "Emergency Major Repairs," Mr. Coonan again wrote Mr. Lehnert and chronicled his previous requests for repairs "to prevent possible serious accidents." With reference to the parapet walls, he warned: "If any great movement develops, loose brick will fall down on pedestrians. These three items should be given top priority—roof, parapet walls and windows."

He mentioned having made several pleas to the main office to remove the existing hazards "without any success."

On November 12, 1957, custodian Conlin again wrote Supervisor of Custodians, R. G. Hudson, with reference to "Hazardous Conditions." The letter cited previous complaints, letters, and inspections of the roof and the parapet wall conditions. Mr. Conlin stated that upon an inspection that very day, he found the condition had now become "most hazardous." This letter bore the approval and signature of the principal, Joseph Lichtman. Nothing was done.

On June 6, 1958, the inevitable happened—part of the parapet wall collapsed into the street. Mr. Conlin notified the Borough Office of the Bureau of Plant Operation and Maintenance and inspectors R. Sieburt and F. Conlin were rushed to the scene. When they arrived they found two police squad cars and the entire block roped off. Miraculously, no one was hurt in spite of the fact that people in the neighborhood were in the habit of sitting in front of the school in the summertime. The inspectors and custodian went to the roof and removed some loose brick by hand. Mr. Sieburt at a private hearing on June 7, 1961 expressed his long frustration at seeing his repeated pleas ignored by superiors. Before the accident occurred, he had constantly written work order specifications to remove these hazardous conditions only to find them sent back with the explanation that a major job was going to be authorized some time in the future. Because of his concern, he wrote a strong letter to his superior, Mr. Coonan, criticizing the Borough Office for its refusal to make the building safe. As a result of this letter, Mr. Sieburt was called on the carpet and almost fired (Pr. H. 13,426-7).

8. *Inadequate Heating*

One of the most frequent and common complaints regarding new schools was that of inadequate heating. The New York City Health Code requires that a minimum temperature of between sixty-eight to seventy-two degrees fahrenheit be maintained in school buildings during the winter season.* During the Commission's investigation, it learned of many new schools where classroom temperatures ranged from ten to twenty or more degrees below the legal minimum. One such school was William F. Grady High School** constructed in 1957 at a cost of over \$5,000,000, where, for example, one room had temperatures as low as forty-five degrees.

* New York City Health Code, Section 45.11 (d).

** Located at 25 Brighton 4th Road in Brooklyn.

From the very opening of the school in 1957, it became apparent that the building could not be heated properly. When complaints were reported to the Board of Education, it was suggested that the boilers were not being run at full capacity (297). This explanation was soon discarded for the heating problem persisted although all three boilers were operated at full capacity about 15 hours a day, and also on weekends (297).

The following letter was written on March 20, 1958 by N. C. Emil, a teacher at William Grady High School, to principal Irving Waldt, concerning the cold temperatures at the school:

"Dear Mr. Waldt:

"I have made practically daily reports on the temperature in the rooms of the third floor of our building. The temperature in Room 301 varies from a low of 45 to 48 degrees to a high of 62 degrees. It has not gone higher this past winter.

"I have had occasion recently to consult my physician in regard to some pain in back and legs. He has informed me that these pains are rheumatic and they are induced by the unhealthy conditions of my office and the surrounding school area.

"I trust that some remediation may be undertaken as soon as possible because this condition constitutes a threat to my health."

A copy of this letter was sent by Principal Waldt to Associate Superintendent Moskowitz with the following accompanying letter of transmittal* which indicates that the Board of Education had been notified previously about this condition:

"Dear Dr. Moskowitz:

"The enclosed copy of a memo I have received speaks for itself. Mr. Emil is Chairman of the Academic Subjects Department and his complaint is not an uncommon one, as you probably realize from my previous letters on this subject.

"I do hope that steps will be taken to remedy the inadequate radiation in our building so that we shall not go through a similar crisis next winter.

Respectfully,
Irving Waldt, Principal"

Mr. Thomas Haughey, custodian of William Grady High School testified at the Commission's public hearing. He related several in-

* Both letters were introduced at the public hearing as Commission Exhibit #18.

stances where the lack of heat made it necessary to vacate classrooms in order to protect the health of the children (294). Some rooms were so cold that overcoats were worn in class (291-292).

As a result of these persistent complaints by the custodian, principal and teachers, the Board of Education inspected the school to see what could be done. Mr. Haughey was present at these inspections and warned the Board of Education that the contemplated additional work would not suffice. As a matter of fact, Mr. Haughey, upon taking over as custodian, made a survey of the school with his predecessor, and together they estimated that it would cost roughly about \$80,000 to correct the heating deficiencies. When Mr. Haughey cautioned the Board of Education that the contemplated remedial work was insufficient, he was told that it was necessary to keep the cost down in order to avoid criticism since this was a new school (295).

Additional radiation was installed costing the Board of Education another \$13,900 (296), but Mr. Haughey's unheeded prognostication proved accurate:

"Q. Do you still have a section of the building that you cannot heat properly?

A. We have, yes.

COMMISSIONER GRUMET: To this day?

THE WITNESS: Yes.

Q. In that section, Mr. Haughey, have you received complaints from the teachers that it is worse than it had been before the work was installed?

A. That's right. The teachers complained that it is worse since the correction was made than it was before." (296-297).

On March 22, 1961, Mr. Haughey, still plagued by this serious heating problem, wrote Supervisor of Custodians A. J. Maher concerning his problem. He pointed out that in spite of the installation of additional radiation, the temperature in a certain section of the building "never rises above fifty-five degrees" during winter days. His letter* advised that operation of the unit heaters continuously from 5:00 A.M. to 10:00 P.M. daily and for five hours on Saturday and Sunday resulted in motor failure on several occasions. One room was described as "now operating with a makeshift arrangement consisting of a salvaged motor from an old washing machine" which caused "unbearable" noise. He complained of the "waste of fuel"

* Introduced at the public hearing as Commission Exhibit #19.

and lack of stand-by facilities in case of breakdown. Three instances of breakdown were cited in his letter, any of which "might have resulted in closing the school." Upon one of those occasions, the students themselves had to come to the aid of Mr. Haughey and repair the motor in the school shop (301). All this in a \$5,000,000 school, four years old.

Following Mr. Haughey as a witness at the Commission's public hearing was James B. Powers, Director of Repairs of the Board of Education. Mr. Powers testified that in April, 1961, almost exactly four years after William Grady High School opened in 1957—and two months before the Commission's public hearing—he was assigned the task of investigating the cause of the heating problem. Mr. Powers listed six items he was investigating, five of which clearly showed that the contract requirements had not been complied with. All five items were described by Mr. Powers as matters which should have been detected by the Board of Education inspector (310-312).

At one cold Queens school, J.H.S. 180,* the heating problem was actually forecast by the Allied Parents Association of the Rockaways after examining the plans, before construction started. Their warnings were disregarded by the Board of Education (377). The following extract from a letter submitted by the parents group to the Board of Education describes what happened.

"Gentlemen,

"Prior to construction of J.H.S. #180, after repeated requests, we were finally given an opportunity to examine the final plans. We stated to Dr. Moskowitz and Dr. Swartz that even though the architectural design won an award, this school was better suited for the climate of Arizona or Florida . . ."

This unhappy observation proved correct for since the opening of the school, it has suffered a very serious heating deficiency. In some rooms, the temperature rose no higher than fifty-six degrees during winter (371). After reporting this condition to the Board of Education, unfruitful inspections and conferences dragged on for years. Custodian Lionel Savary described how long it took before even partial corrective measures were initiated:

"Q. When was the first actual thing done to improve the radiation?

A. That was February of 1961.

* This school, which opened officially in September, 1958, was constructed at an approximate cost of \$3,472,723.

THE CHAIRMAN: February of 1961?

THE WITNESS: Yes, then the first floor additional radiators were placed in there as an experiment. It was successful.

THE CHAIRMAN: In other words, it was more than two years after you wrote that letter that anything at all was done; is that correct?

THE WITNESS: Yes, practically, yes.

COMMISSIONER LANE: That is the first floor. What about the others?

THE WITNESS: Just the first floor.

COMMISSIONER LANE: Nothing done about the others?

THE WITNESS: They are expected to be taken care of this summer.

COMMISSIONER LANE: I know. But up to date nothing has been done about it?

THE WITNESS: No." (373-374).

As was necessary at William Grady H.S., the custodian at this school operated the boilers beyond the normal eight-hour operational day. Although all three boilers ran from 4:00 A.M. to 4:00 P.M., 51 of the approximately 68 rooms in the school were cold and registered temperatures below the minimum Health Department requirements (371-372). The Board of Education attributed the heating deficiency to inadequate design—a design which the parents group had warned was not suited for that school location.

One of the most touching stories unfolded at the Commission's public hearing concerned P.S. 26, Brooklyn. That 1955 school also could not be heated properly. Room 104 is reserved for the cardiac and physically handicapped children. This room has the questionable distinction of being known as the *coldest room in the entire school* (360). Removal of these children to another room is not feasible because Room 104 was specifically designed for their special use. Complaints about heating inadequacy began on March 25, 1957 and continued up through April of 1961. Over the years the Board of Education was kept constantly informed of this condition. Custodian Marion E. Carter appeared at the public hearing and described what transpired:

"Q. What was their [the Board of Education inspectors'] reaction, sir?

A. They would take it back to the office and see what they could do.

THE CHAIRMAN: What happened?

THE WITNESS: Nothing." (362).

It is unnecessary to dwell at length upon heating deficiencies at other schools, but a few others will be mentioned in summary fashion: P.S. 138, Bronx, reported a heating problem from the time the school opened in 1958. After a conference of the punch list team, referred to on page . . . , it was judged a product of faulty design and the custodian was assured that a survey would be made to see what could be done. Since that conference in 1959, the heating problem has been permitted to continue unabated (Pr. H. 6,884-7). Such characteristic indecision and inaction was repeated at P.S. 50, Richmond, which also has had a heating problem since the school opened in 1958 (Pr. H. 6,365). At P.S. 204, Queens, temperatures fell so low that it was necessary for the custodian, during the winter, to visit classrooms with a blow torch in order to thaw out frozen radiators (Pr. H. 6,436). In some classrooms it was necessary for the children to wear overcoats in order to safeguard their health (Pr. H. 6,438).

At J.H.S. 33, Brooklyn, a 1957 school, a heating problem came into being in a different fashion. The custodian at that school reported to the Board of Education, on or about January 1959, that window fasteners were missing from many of its hopper windows.* Because of this, the bottom part of the windows could not be maintained in a closed position, resulting in a great heat loss during winter months. Nothing was done (Pr. H. 11,749). In a letter dated November 19, 1960, Principal Saul I. Siegal reported 126 such missing window catches. Because of this condition, the custodian and teachers began their winter days by stuffing paper in the fasteners in their unsuccessful attempts to keep the windows closed (Pr. H. 11,748).

9. *Leakage*

The story of J.H.S. 14, Brooklyn, is an excellent example of the customary pattern of events following the discovery of a school construction problem. It illustrates that no clandestine conspiracy between a contractor and inspector is necessary for a contractor to escape liability for faulty work. The administrative red tape demonstrated here is too sadly typical of other schools. The

* The classroom windows consist of a bottom sash which is a combination of a double hung and pivot sash.

Board of Education's blind optimism that unpleasant events will disappear if ignored resulted in progressive aggravation of a condition which could—and should have—been corrected immediately. This \$2,500,000 school officially opened for students on February 1, 1952, and is located at Batchelder Street and Avenue X in Brooklyn. Custodian John M. O'Malley, within the first year, detected evidence of a leaking roof and reported this on his punch list dated January 3, 1953 (467).

Since this condition was reported within the warranty period to the Bureau of Construction, it was the latter's duty to compel the responsible party—be it the general contractor, roof supplier, or anyone else—to correct the condition and eliminate the cause. The Bureau of Construction failed to discharge this elementary responsibility but instead left the problem to the Bureau of Plant Operation and Maintenance. Since the school had an acknowledged structural defect, Bureau of Plant Operation and Maintenance protested and insisted that it was the Bureau of Construction's task to have the roof taken care of. A riot of correspondence, conferences, and adroit buck-passing was unleashed—nothing was accomplished, the condition worsened. More rooms showed leakage; other areas of the school became affected, and within a few years it was apparent that a complete replacement of the roof would be the only solution. Although this was recognized as early as 1955 and 1956 (469), the Board of Education permitted patch work repairs to be made. These actually aggravated the condition.

In 1956, Mr. Morris Liebeskind, Deputy Superintendent of Maintenance of the Board of Education, entered the picture. A civil engineer with wide professional experience, it was one of Mr. Liebeskind's responsibilities at that time to check on uncorrected punch list items, i.e., to make sure that items reported on the punch lists in various new schools were being corrected.

At the Commission's public hearing, Mr. Liebeskind testified concerning J.H.S. 14 and Martin Van Buren High School, Queens. As to J.H.S. 14, he testified as follows:

"Q. It leaked the first year and it was reported the first year?

A. Yes, that is correct.

Q. Is there any excuse for a new roof to leak if the workmanship is proper and the material is proper?

A. There is no excuse whatsoever.

Q. What would you estimate to be the average life of a roof?

A. Our experience in maintenance, indicates that a roof, if constructed properly, with good materials and workmanship, should last 30 years, if not 40 years.

* * *

Q. If this roof leak appeared within the first year, shouldn't the Bureau of Construction have gotten after the contractor to eliminate the cause of the roof leak?

A. It was their responsibility to see to it that the contractor repaired the roof, and perhaps their responsibility to find out the cause of such leaks in the punch list, as previously indicated were wide spread.

Q. This should have been done at no expense to the Board of Education?

A. No, none whatsoever." (467-468).

On November 13, 1956, four years after the school opened, Assistant Superintendent David J. Swartz wrote William Correale, Director of the Bureau of Construction, informing him of a letter* from the principal of J.H.S. 14, Maxwell Solomon, that the roof is in "deplorable condition" and that "several rooms" have been "ruined" (471). One year later on November 22, 1957, Mr. Howard M. Dowling, of Bureau of Plant Operation and Maintenance, reported to Mr. Liebeskind the results of his inspection of the school on that date. The report stated "new leaks were evident in locations where no evidence of leakage existed on previous inspection." The report listed 21 locations, some of which had many leaking areas. For example, Room 326 was considered only one of the twenty-one locations but there were six leaks reported in that room. Locations affected included not only classrooms, but both the girls' and boys' gymnasiums, the auditorium and other places. The letter concluded with the warning that "these roofs will give continual trouble until replaced" and characterized the workmanship as "inferior" and the design as "not in accord with recommended practice" (472).

On February 20, 1958, Principal Solomon wrote to Mr. Lawrence B. Coonan, Borough Superintendent of Bureau of Plant Operation and Maintenance, informing him of the "hazard" created by leaks

* These letters, and the other correspondence quoted in this section concerning the leakage at J.H.S. 14 were all introduced at the public hearing as Commission Exhibit #37.

which had "immersed" one room to such an extent that it was necessary to completely abandon it. He described the leaking condition in areas other than classrooms such as shops, and stated that pails were set on the floors in order to catch the water. Following that letter, an inspection was made a week later which disclosed loosening of the asphalt tile, flaking of the ceiling, destruction of equipment and a stench due to dampness. On March 5, 1958, Mr. Liebeskind inspected the school and in a report the following day warned that the condition had "materially worsened". He described it as a "disgraceful situation" and reported "signs of leakage in almost every room." In one room six pails were noticed (475). Mr. Liebeskind, as he had done continuously on previous occasions, made every effort to get the roofing contractor and the general contractor to correct this condition. Since his intervention in 1956, he constantly urged his superiors to take action to correct this deplorable condition.

This incredible neglect prompted a parent, on April 2, 1958, to write the principal the following letter which refers to only one room affected by the leakage:

"Dear Sir:

"My daughter is a senior student at P.S. 14 J.H.S., Brooklyn, New York. Her course of study includes a class in Domestic Science, which instruction she receives in Room 306 of that school. On numerous occasions she has complained to me that the ceiling in that room leaks in the rain and that the plaster is falling. This condition has existed for many months, is becoming worse, and in spite of it having been called to the attention of the teachers, nothing has been done to remedy the situation.

"This is to advise you formally that the ceiling in Room 306 requires repair and creates a dangerous condition.

"This is to further advise you that should plaster fall and injure a child in that room, mine or any other, you will be held responsible to the full extent of the law.

Very truly yours,

Evelyn Erlis"

About one week later, Mrs. Erlis received a reply from the office of the then Superintendent of Schools, Dr. William Jansen, notifying her that her letter had been received and was being referred to the proper authorities for "appropriate action."

This parent's warning in 1958 was no more successful than the many which had preceded it, as reflected in the following letter dated March 8, 1961 from the principal:

"Dear Mr. Weiss:

"This junior high school was opened officially on February 1, 1952. I was assigned as its principal and have been serving in this capacity continuously since. During the course of the very first year of its existence, the school was beset with defective roofing. We have rooms on the third (top) floor suffering leakage. In due time, the leakage was also noted in the gymnasiums and in the auditorium. We reported the condition to the Bureau of Plant Operation and Maintenance and a round robin of correspondence among the Bureau, the builder, the supplier, and the bonding company ensued.

"You might be interested to know that Mr. Lawrence B. Coonan, Mr. Lehnert, and Dr. Swartz from Dr. Jensen's office were apprised of the condition. Over the period of years, we have had repairs made through both specifications and work orders. Despite the attention given, Mr. Lawrence B. Coonan, at the time Borough Superintendent, stated that a complete replacement would be the only effective means of curing the situation.

"I entreat you to consider the fact that the roof is in worse shape than ever. With the custodian's corroboration, I wish to report that we are suffering from leakage in:

Room 306—Girl's Cooking Shop

Girls' Toilet—Adjacent to Room 306

Room 305—Special English Room

Room 307—Women Teachers' Room

Room 314—Girls' Novelty Shop

Room 334—Special Office

Third Floor Corridor

Boys' Gymnasium—First Floor

Girls' Gymnasium—First Floor

Auditorium—First Floor

"We found an untenable condition in the Cooking Shop this morning, despite the fact that a roofer has been working on patching for the last few days as a result of a work order. When he saw the condition this morning, he informed me that

the job was too big for him. He telephoned his superior and an inspector was sent to the building. This man also feels that the only action to be taken to relieve the hazardous situation is to replace the five flat roof over the wings completely.

"Extremely serious to us and to the community is the fact that we have been forced to abandon the Cooking Shop. Depriving our girls of this activity will not impress our parents favorably and I can foresee receiving a chain of complaints and charges. Incidentally, a real emergency was created in the Cooking Shop when the water, dripping through the ceiling, short circuited the electricity forcing us to keep the room in darkness.

"I am quite confident that you will agree that much effort and money have been spent in an unsuccessful attempt to cure a defect that really requires an over-all replacement. We were able to carry on, although handicapped up to this point. Now that we are obliged to curtail activities, we feel that the seriousness of this step requires your immediate attention. I truly hope that you will give it that.

Very truly yours,

Maxwell E. Solomon

Principal."

This nine year old condition was not corrected at the time of the Commission's public hearing. As a matter of fact, shortly before Mr. Liebeskind testified at the public hearing on June 22, 1961, a call was placed to the school to check on the leakage problem because of rainy weather the preceding day. During Mr. Liebeskind's testimony, a message was received that water was beginning to leak from the roof into several rooms (479).

In addition to the discomfort and health hazard created, this condition has proven most costly. On May 8, 1961, an estimate* was prepared of the cost of replacing the roof and providing certain necessary sanitary work, which totaled \$61,000. The figure does not include consequential damage such as replacement of ruined equipment or painting of rooms that were affected. Not a single penny of this figure would have been necessary had the Board of Education done its job.

This nine-year roof leakage problem at J.H.S. 14 achieved a widespread notoriety among Board of Education personnel. One

* Introduced at the public hearing as Commission Exhibit #39.

Brooklyn inspector, questioned at a private hearing, needed no reminder of what was wrong at that school:

“Q. The school that I am primarily interested in at this time is J.H.S. 14, in Brooklyn.

A. Oh, that roof?

Q. Yes, the roof.

A. Oh boy, that is a mess.” (Pr. H. 8744).

Mr. Liebeskind’s sense of responsibility prompted him to speak candidly to his superiors about their failure to act:

“BY MR. FISCH:

Q. Mr. Liebeskind, on the files of the Junior High School 14 and the Martin Van Buren [High School], you were criticizing this buck-passing and red tape and incompetence?

A. Yes.

Q. Were you ever told to stop writing such letters?

A. I was.

Q. Can you tell us a bit about that?

A. Well, it is rather embarrassing for me, but I will tell you what. I was told I was writing entirely too many letters, being critical of the operations on new buildings.

* * *

Q. May I ask you this question: Although you still hold the title of Deputy Superintendent of Maintenance, have your duties been changed in any way?

A. Yes. In November of 1959, I was assigned different duties, and then in May of 1960, I was transferred to the main office.

Q. Would you say that you have been put in such a position so that the possibility and occasion to write such strong letters is restricted?

COMMISSIONER LANE: In short, you have been punished for what you did to correct this situation.

THE WITNESS: I would rather not make this statement on my part.” (502-503).

This roof leakage problem at J.H.S. 14 was characteristic of many new schools constructed during the period of the Commission’s inquiry. Correspondence of the Board of Education contained in the

J.H.S. 14 file refers to similar leakage problems at other schools erected at about the same time.

Another school which was the subject of testimony at the Commission's hearing was Martin Van Buren H.S. in Queens, opened in September 1955. On his first punch list for general construction dated December 12, 1955, custodian Thomas Breen listed 15 roof items requiring attention, including several notations about roof leakage over various classrooms and other areas. In his subsequent general construction punch list dated May 5, 1957, these leakage notations were repeated. At a private hearing on April 24, 1961, Mr. Breen discussed uncorrected punch list items and stated that the roof still leaked as of that day (Pr. H. 9806).

Principal Bess Berger of P. S. 221, Queens, a 1958 school, had a similar problem at her school. This water leakage developed from the very opening of the school and affected a number of areas beneath the roof. There were leaks over the entrance to the auditorium, and water seeping through the east wall in the gymnasium and also into the kindergarten. Reports of these conditions were made by Mrs. Berger and the custodian to the Bureau of Construction, the Bureau of Early Childhood Education and to Deputy Superintendent of Schools Weiss. Inspections were held without any follow-up correction and the leakage continued to the time of the public hearing.

As late as April 12, 1961, Mrs. Berger wrote Deputy Superintendent Joseph Weiss concerning the problem of uncorrected defects. Her letter stated that the neglect of these conditions over the two and one-half years since the opening of the school caused "considerable damage" and rendered certain play areas unusable. The letter pointed out that these conditions had all been previously reported. Mrs. Berger was asked what results her letter produced:

"Q. Did you know what happened as a result of this letter, if anything; or did anything happen?

A. Well, they sent someone down to inspect it.

Q. This is as far as you got?

A. That's all, just to inspect. That is all I have been able to get, inspections." (Pr. H. 9913).

The New York School of Printing Trades was built at a cost of \$6,270,000, and opened for receipt of students in September 1958. Since the fall of that year, it has been troubled with a major problem

of water leakage along the entire southeast wall of the building (441). Custodian Joseph Fernandez testified that during the course of construction the general contractor had failed to perform what is known as the water leakage test, whereby water under high pressure is played against the exterior of the building to test its waterproofing qualities (443-4). Unfortunately, failure to perform this test may now cost the City approximately \$16,000,* for liability may be difficult to place some three and one-half years after inception of the condition.

Aviation Trades High School in Queens was built at a cost of approximately \$7,500,000, and was opened for receipt of students in October 1958. It has always been plagued with a water leakage problem of such major proportions that water buckets must be used to minimize damage (Pr. H. 3537). Before June 1961, numerous complaints resulted in nothing more than the usual rounds of meetings and conferences. In June 1961, on the eve of the Commission's public hearing, the Board of Education instituted against the general contractor, the Caristo Construction Corporation, a suit in the amount of \$500,000, reflecting the cost of repair of this leakage condition.

Electrocution Hazards

At the Commission's public hearing, Marion E. Carter, custodian of P.S. 26, Brooklyn, a 1955 school, also testified concerning the effect of leakage at his school. Because of the failure of the Board of Education to install a drain in the switchboard room of the basement, a danger of electrocution existed. In spite of the custodian's requests that this matter be given attention, nothing was done. Records of the Board of Education in the Commission's possession indicate recognition of this problem as early as 1958. Mr. Morris Liebeskind, Deputy Superintendent of Maintenance, was also involved in attempting to correct this problem. Letters from Mr. Liebeskind to other Board of Education officials make reference to a letter dated April 29, 1958 to Mr. R. G. Hudson, and letters of May 7, 1958 and September 8, 1958 to Dr. Moskowitz. In a letter dated June 3, 1959, Mr. Lawrence Coonan, Borough Superintendent of Brooklyn, assured Mr. Liebeskind that "definite steps" would be taken:

* The custodian estimated that it would cost about \$16,000 to properly waterproof the wall at this time.

"Since the Bureau of Construction and the contractor involved apparently intend to take definite steps to correct this defective condition, there is now no need for the Brooklyn office or this Bureau to take any investigative or corrective action on this matter."

Although "definite steps" were promised, a year and a half after that letter an inspection indicated the problem still existed. The following report by J. P. Sullivan, Assistant Supervisor, well illustrates the customary Board of Education approach to even dangerous conditions:

"Mr. J. P. Sullivan
Mr. A. J. Maher
Supv. of Custodians

February 17, 1960

"Dangerous Water Leakage
Thru Electric Service Box,
P-26 K

"On an inspection of this building February 15th I noticed a pipe sticking out through the door of the electric switchboard room. Further investigation revealed that the pipe was actually *a drain improvised by the custodian-engineer to drain water from the switchboard room.* Checking I observed that water is running from two electrical conduits into the service box. The custodian's drain was to carry this water outside the switchboard room.

"This building is about 4 years old and this condition has existed since then. It has been the subject of 'monthly follow-up' conferences, see who is responsible, etc. letters (see Lehnert to Moskowitz 9/8/58) but this hazardous condition still exists. On July 23, 1959 the contractor packed the conduit with a putty compound which still hasn't stopped the leak as of February 11, 1960.

"That this hazard to electrocution has continued for about 4 years is almost beyond belief. Immediate action should be taken before a fatal accident occurs.

J. P. S.

J. P. SULLIVAN
Asst. Supervisor

JPS:mld

"Mr. L. B. Coonan,

"The above condition indicates that an emergency order should be issued to correct the condition, regardless of responsibility of the Bureau of Construction or the contractor.

A. J. MAHER"

What finally did provoke the Board of Education to move was described at the public hearing by Marion E. Carter, custodian of P.S. 26, Brooklyn:

"Q. Mr. Carter, how many years did it take before a drain was installed in the switchboard room to eliminate the leakage caused by water seepage?

A. From the time the building is up—I don't remember when it was.

Q. About five years, wasn't it?

A. I believe it was in—it must have been nearly five years.

Q. Did you ever give an order that no one was to enter the room because of the danger of electrocution?

A. When there was water on the floor, I did.

Q. You did give such an order?

A. Yes. That was to all my help crews and anyone in that particular order.

Q. The drain was finally fixed after a visit of agents of this Commission?

A. Yes.

Q. Up to that time it had not been installed?

A. No." (365-366).

An electrocution problem similar to that in P.S. 26, Brooklyn, existed at P.S. 289, Brooklyn. Within the very first year after the school's completion in February of 1959, flooding of the boiler room took place. This was reported by custodian Paul Moran to Mr. Michael Pruzan, one of three Construction Managers (Bureau of Construction) in the entire city of New York. The only correction attempted was repair of the oil burner installation. In July of 1960 flooding recurred. Because electrical controls located in the boiler room were covered with water, the custodian ordered his workers

to stay out in view of the serious hazard of electrocution. Due to the Board's failure to eliminate the cause of the flooding, further repairs of \$4,302.31 were necessary in the next year and a half.

An official memorandum of Bernard J. Farrell, Chief Engineer of the Board of Education, dated May 22, 1961, replying to the Commission's query, attributed the flooding condition to a design error by the private architect* in the omission of a backwater valve. No back charge was made against the architect for this design mistake.

Here, as at P.S. 26, the condition was remedied after one of the Commission agents visited the school (518).

10. Deterioration Due to Insect and Termite Infestation

Martin Van Buren H.S., Queens, a \$5,500,000 school, was troubled by progressive deterioration of its wooden floors due to insects and termites from its opening in 1955 to the time of the public hearing.

In his punch list, custodian Thomas Breen reported uneven floors in several locations, including the boys' and girls' gyms and the music rooms. An inspection on July 10, 1956 by the Queens Borough Office of the Bureau of Plant Operation and Maintenance, checking on punch list items, confirmed this condition. In a letter dated July 13, 1956, Borough Superintendent Stern informed Mr. Lehnert, Superintendent of Maintenance, of this situation and stated: "Since these floors are under the jurisdiction of the Bureau of Construction, it is mandatory that these deficiencies are corrected before the floors are accepted and turned over to B.P.O.M." This was not done. On May 8, 1957, custodian Thomas Breen reported "a number of holes have appeared in the new maple flooring and apparently some sort of wood-boring insect is at work under this flooring." Mr. Breen urged that this condition, which he considered warranted "immediate attention," be investigated by one well versed on the subject of insect control. On May 29th, the Board of Education exterminator did some work at the school. On June 4, 1957, Principal Paul Denn wrote Associate Superintendent David Moskowitz, reporting that he and Mr. Breen had done some independent research investigation, and based on the U.S. Department of Agriculture Yearbook, had identified the insect as one which reduces wood-

* The private architect received a fee of approximately \$100,000.

work to a powder-like condition. Mr. Denn concluded by advising Dr. Moskowitz as follows:

"Inasmuch as it appears to me that the beetle infestation must have occurred before the flooring was laid, I call this to your attention with a view towards determining the contractor's responsibility."

On August 12, 1958, custodian Breen notified Mr. Stern that the condition still existed and that more holes were developing. A number of these insects were actually observed walking on the top surface of the floor. Mr. Breen's letter was transmitted by Mr. Stern on August 18, 1958 to Mr. Lehnert:

"Attached herewith is copy of report dated August 12, 1958 from Cust. Engineer Thomas J. Breen reporting that the condition of the gym floor continues to deteriorate in that the number of small holes is increasing. He further adds that some of these beetles are still alive and in evidence.

"This condition may be due to the lack of proper kiln drying of the sub-flooring, permitting infestation by the borers before installation.

"This has been previously called to your attention on June 5, 1957 but no remedial action has been taken.

"It is again requested that this be referred to the Bureau of Construction as the agency responsible for the rectification of this condition.

"Our shop exterminator has treated the areas without any appreciable success."

More letters, consultations and inspections ensued. When part of the floor was removed, the Board of Education repairmen found "dry rot, termites, wood borers and ants." It became apparent that the entire gymnasium floor would probably have to be removed. The custodian caught several of the insects and they were submitted to the U.S. Department of Agriculture for analysis. By this time not only the gym floor, located on the ground floor, was affected but also the floors of the music rooms located on higher levels. Mr. Liebeskind, Deputy Superintendent of Maintenance, testified that the results of the Department of Agriculture analysis disclosed that the wood was bad in that it had not been sufficiently kiln-dried to destroy whatever larvae existed in the wood. This represented a failure by the contractor to meet his contractual obligations (497).

In spite of the fact that it was the considered judgment of all concerned that the contractor had provided bad wood, no attempt

was made to have him remedy this condition. As late as March 23, 1961 the principal again appealed to the Board of Education to correct this "developing dangerous condition." He warned that "unless something is done as quickly as possible we face the likelihood that the gymnasium flooring will collapse suddenly with possible injury to student or faculty personnel."

Shortly before the public hearing Mr. Liebeskind, using Board of Education prices, estimated that it would cost over \$56,000 to replace the affected areas. This figure covers only damage already done.

"Q. Mr. Liebeskind, is it possible that there will be further deterioration?

A. I would say so. This goes on for years, sometimes, according to my experience." (501).

11. Defective Concrete

Another very common complaint was defective concrete work on sidewalks and play areas. This appeared in the form of cracks, gulleys and other breaks in the smooth surface of the cement, constituting tripping hazards for the students, teachers and other personnel. Mr. Oldak, custodian of P.S. 138, Bronx, reported such a condition on his first (four month) punch list on March 21, 1959,* but no attention at all was given to his complaint (272-273).

The same items were repeated in the second punch list of July 1959, and were also disregarded by the Board of Education. At the conference of the Punch List Team at the school on October 13, 1959, the sidewalk condition was reviewed and continued on the Revised Punch List as follows:

- "24. Repair all sidewalk cracks.
- 25. Grind down edge of cement sidewalk at entrances No. 8 and 9 so as to remove tripping hazard.
- 26. Fill in gap at concrete pavement at exit #3, cafeteria service entrance on Olmstead Avenue."

The fact that these items were kept on the Revised Punch List constituted an acknowledgement that this was an unsatisfactory construction item and the responsibility of the contractor to correct.

Refusing to be put off, Mr. Oldak continued reminding the Board of Education of its duty. As late as January 12, 1961, he wrote the Board of Education, informing it of "still outstanding" items remain-

* The school opened October 1958.

ing from the ten month punch list of 1959. Items 24, 25, 26, see above, pertaining to sidewalk cracks, etc., were repeated as were many other items. In March 1961, Mr. Oldak testified at a private hearing of the Commission and discussed his many school construction problems. On May 5, 1961, this Commission, having already independently assembled its data, requested of the Board of Education all records pertaining to the sidewalk condition to assure the completeness and accuracy of its file. In response to this, the Board, on May 9, 1961, wrote the principal and Mr. Oldak, inquiring whether they had any record of complaints made to the Board of Education concerning "broken sidewalks."

Mr. Oldak, on May 10, 1961, replied to the communication and reminded the Board of Education that "To this date not one inch of concrete has been repaired or even reviewed by the contractor."

At the public hearing, the results of the engineers' tests made of the concrete work on May 5, 1961 were introduced. See Schedule 12, p. 102.

Engineering tests were likewise conducted at J.H.S. 142, Bronx. Eight random core tests were made and it was found that in six of these tests the cinder fill was of a depth less than that required by the plans, and in one of the test spots it was found that there was no cinder fill at all! See Schedule 13, p. 103.

Custodian Carter of P.S. 26, Brooklyn, had a problem with the concrete sidewalks around his school shortly after it opened in 1958. Some of it was so bad that it actually broke in his hand when picked up (364). Mr. Carter testified at the public hearing that it took two years for the Board of Education to correct this condition (365). As late as October 16, 1961—almost four months after this condition was discussed at the public hearing—there was no attempt to back charge the contractor for this poor concrete.

Less successful than Mr. Carter was custodian Austin F. Maxwell of J.H.S. 61, Brooklyn, which opened in 1958. As late as March 10, 1961, when he was examined at a private hearing, uncompleted punch list items remained, including defective concrete complaints. These matters were reported on the first and second punch lists but not corrected by the contractor. The cracked sidewalks were near school exits and represented serious trip hazards. When this was pointed out to the general contractor during the warranty period, some work was done, but the conditions and concomitant hazard recurred. It was only "by good luck" that no one was ever injured (Pr. H. 6325), and though Board of Education personnel agreed that the condition was serious, nothing was done (Pr. H. 6327-28).

SCHEDULE 12 **THICKNESS OF SIDEWALK CONCRETE AND CINDER FILL** **P. S. 138—BRONX, N. Y.**

Core No.	Location	Depth of Concrete	Depth of Cinder Fill
1	Sidewalk at Main Entrance Area	4.0"	2.5"
2	Sidewalk at Main Entrance Area	4.0"	2.5"
3	Sidewalk at Main Entrance Area	4.5"	3.5"
4	Sidewalk at Main Entrance Area	4.5"	3.0"
5	Sidewalk Lafayette Avenue	3.75"	7.0"
6	Sidewalk Lafayette Avenue	4.125"	2.75"
7	Sidewalk Lafayette Avenue	3.875"	4.50"
8	Sidewalk Lafayette Avenue	4.125"	3.50"
9	Sidewalk Lafayette Avenue	5.25"	5.50"
10	Sidewalk Lafayette Avenue	2.625"	7.50"
11	Sidewalk Lafayette Avenue	3.875"	4.50"
12	Sidewalk Lafayette Avenue	4.0"	6.0"
13	Sidewalk Lafayette Avenue	4.0"	4.0"
14	Sidewalk Entrance No. 3	3.875"	3.25"
15	Sidewalk Entrance No. 3	4.125"	3.75"
16	Sidewalk Entrance No. 3	3.75"	2.50"
17	Sidewalk Entrance No. 3	3.375"	2.25"
18	Sidewalk Entrance Nos. 8 and 9	3.875"	0.25"
19	Sidewalk Entrance Nos. 8 and 9	4.375"	3.00"
20	Sidewalk Entrance Nos. 8 and 9	3.75"	3.75"
21	Sidewalk Entrance Nos. 8 and 9	4.875"	1.50"

The depth of sidewalk concrete required is: 4.0"

The depth of sidewalk cinder fill required is: 6.0"

Eighteen of the twenty-one core holes or 85% indicate that the depth of cinder fill is less than the 6" required.

THICKNESS OF SIDEWALK CONCRETE AND CINDER FILL
J. H. S. 142—BRONX, N. Y.

The depth of sidewalk concrete required is: 4.0"
The depth of sidewalk cinder fill required is: 6.0"

When custodian Joseph Giotta of P.S. 140, Bronx, reported that depressions in the playground yard caused tripping hazards, his complaint was passed from the Bureau of Construction to the Bureau of Plant Operation and Maintenance and finally to Dr. Moskowitz of the Division of Housing. Dr. Moskowitz in a letter to the Bureau of Plant Operation and Maintenance, dated November 12, 1958, advised that a playground surface could not be "as smooth as a billiard table." In reply to this admonition from Dr. Moskowitz, Mr. Lehnert of the Bureau of Plant Operation and Maintenance stated that "something should be done about this play area." Mr. Giotta was asked what happened after Mr. Lehnert's letter of November 20, 1958:

"Q. This was November 20, 1958. What has happened since then? Have they made any attempt to correct it?

A. No. It's lying dormant and it's a dead issue, I imagine."
(Pr. H. 6,401).

Similar concrete problems were noted in a number of other new schools.

12. Incredible Waste

a. *The Board's Answer to Air Conditioning: An Ice Box*

Much was heard from a proud Board of Education concerning the many new schools erected within the last few years and the amount of money spent on its construction and maintenance program. Modern murals decorate these newly constructed schools and appear to evince a progressive approach to design and construction. An examination beyond these superficial features, however, has revealed some startling examples of antiquated equipment and bungled planning. An example is the cooling system installed at William F. Grady Vocational High School in Brooklyn.*

The cooling system, "one of the standing jokes" at the school (Pr. H. 4455), consists of an *ice box*, characterized by the custodian as "fifty years behind the times." At the public hearing custodian Thomas Haughey described how this museum piece was designed to operate:

"Q. Can you describe what that cooling system is, in a general way?

A. The cooling system consists of an ice chest about—well, 300 cubic feet.

* The heating and ventilating work at this 1957 school cost \$479,000. As described on p. 82, the heating system early proved itself a failure.

Q. You mean an ice machine?

A. No, I mean an ice box.

Q. Yes.

A. And it is hooked up with a pump and pipe and a coil to pump cold water up through the chamber into a fan which supplies the air to the auditorium. It is operated by charging the ice chest with up to ten tons of ice." (303).

This description is of its theoretical manner of operation, for it has never been used. [As a matter of fact, Mr. Haughey doubts that it has ever been tested since completion of the school in 1957 (Pr. H. 4454)]. In the first place, no provision was ever made for the purchase of ice by the school. Secondly, it is "pretty near impossible" to reach, and Mr. Haughey refuses to permit any of his help to attempt to carry ice there because of the danger involved. He described how a man would have to travel to bring ice to the machine:

"He would have to first unload it off a truck and then bring it into the cafeteria, through a door, down about six steps and then drag it across the fan room floor about one hundred feet and then lift it up about two and one-half feet into this ice box." (304).

This anachronism is actually in accordance with the plans and specifications, although it is difficult to believe that this could happen in the year 1957. The head of the Heating and Ventilating Design Section of the Bureau of Construction estimated that it would require ten tons of ice to operate the machine for any one function. Mr. Haughey disagreed with that estimate:

"I think it might require more, because the ten tons have to melt to have a head of water for the pump to pump it upstairs. You have to recharge the box with maybe five tons more." (306).

Mr. Haughey believed the labor expense would probably be three times the cost of the ice.

b. *The Board of Education "Renovates"*

In 1959 the outdoor athletic facilities of James Monroe High School, Bronx, were renovated. The work, which cost \$139,483, included rehabilitation of the school's running track (342). Prior to completion of the work, Dr. Leo Weitz, the principal, learned from his track coach that a disproportionately high amount of clay

was being used and that a muddy track would result if continued. The specifications were examined and research undertaken among trade publications to determine a proper composition for such a track. There was no difficulty in collecting such data and when it was done, Dr. Weitz wrote the Board of Education reporting his findings. He pointed out that the specifications had provided for sixty per cent clay and forty per cent cinder, whereas recommended practice was 80 per cent cinder and 20 per cent clay (343). As a matter of fact, in writing the Board of Education, Dr. Weitz cited two issues of *Scholastic Coach** so that the Board of Education could check this independently. His letter of February 3, 1959** concluded:

"It seems to me that it would be a shame to have spent \$150,000 and then find that our track is no good."

Upon receipt of this letter, the Bureau of Plant Operation and Maintenance referred it to Associate Superintendent Moskowitz. In his letter of transmittal,*** Dr. Lehnert wrote:

"If the facts are as stated that the composition of the new cinder track is 60 per cent clay and 40 per cent cinders, you should move into this picture immediately. If the job is finished in that way, we will definitely have a muddy track."

Dr. Weitz's warning proved accurate. Since the completion of the track, it is muddy after a rain and unusable (348). Before this so-called renovation, the track was worn, but used without restriction. Dr. Weitz, in a letter dated April 8, 1960, to Assistant Superintendent D. Francis Griffith, explained the consequences of this attempted Board of Education improvement:

"[Since the renovation] we have had a muddy track which has been unusable for our purposes. It seems to me that this has been a shameful waste of money. Before the so-called improvement, the track needed repair but we could use it for practice."

This letter was referred to another division. On April 28, 1960, Dr. Moskowitz wrote Deputy Superintendent Joseph Weiss about the entire history of the track and added:

"There is no doubt that the track cannot be used for the purpose it is intended. I would appreciate it if you had the whole

* A trade publication readily available to all.

** Introduced at the public hearing as Commission Exhibit #27.

*** Introduced at the public hearing as Commission Exhibit #28.

matter reviewed and took steps to make the track usable as soon as possible."

The Board of Education responded by having a specification written for a repair of the entire track in the amount of \$80,000 (349). No attempt could be made to assign responsibility to the contractor because the Board of Education concededly had made a design mistake. Dr. Weitz, learning of this expensive contemplated repair, undertook further investigation on his own to determine whether some saving could be effected. He learned that a different type of track had been successfully installed at a private college, and on September 14, 1960, wrote to the Board of Education suggesting that it explore this other method. No answer to this letter was ever sent nor was even the courtesy of an acknowledgement tendered (350-2). In spite of visits to the school and preparation of work specifications, the condition remains the same. The track is in worse shape than it had ever been prior to the renovation. The Board of Education has no record of any work ever being done to the track since the school opened in 1925:

"Q. As a matter of fact, Dr. Weitz, your coach has been at James Monroe for how long?

A. Well, he has been there since 1932.

Q. Does he recall any trouble with the track?

A. No, not that I know of.

* * *

Q. In other words, Dr. Weitz, after spending \$140,000, the Board of Education put that track in worse shape than it had been before for twenty-eight years, at least?

A. It seems so." (353).

Following Dr. Weitz as a witness at the public hearing, custodian Francis H. Nolan, of Franklin K. Lane High School in Brooklyn, told a similar story. In 1959 the athletic field of that school was "rehabilitated" at a cost of \$54,337. Before the rehabilitation, the athletic field had been used "extensively" not only by the school, but also by the sand lot teams of the community. There were no restrictions on its use and it was enjoyed "from dawn to dusk" (355). When the Board of Education was through, the picture changed.

"Q. After the rehabilitation, what did you find with your athletic field?

A. We had to prohibit the use of the field by both students and public.

Q. You mean that since its completion in 1959 it has not been used at all?

A. That's correct. It has not been used since 1959.

Q. You have not had five minutes' use?

A. None at all.

Q. After the rehabilitation?

A. Yes.

Q. Was that because they created a hazardous condition in the basepaths, among other things?

A. The drainage caused gullies in the basepaths. The gullies, in turn, would cause a hazardous condition.

Q. Did the principal refuse to permit the children to use it because of this dangerous condition?

A. Yes.

Q. How many acres of field are involved?

A. Three and a half acres." (356).

Not only has the school and community been deprived of the field, but it is necessary to have men assigned to keep people off (356). The perennial round-robin of complaints, consultations and inspections took place, but no relief was provided.

Of particular hurt to all old-timers at the school who now witness these unused three and a half acres of field is the irony of their long struggle for the renovation. Records of the Board of Education show that a conference was had in 1954 at which time examination and revision was made of renovation plans which had been first conceived in 1945.

c. Facilities Never Used

The ice machine at William Grady High School is unfortunately typical of the bungled planning and amazing lack of foresight which occurred too often in the Board of Education construction program. Because of administrative apathy and inefficiency, blunders though early detected had little chance of being arrested. Several such absurd results were presented at the public hearing.

J.H.S. 263, Brooklyn, for example, already discussed on pages 42 and 74, was completed in October 1955, but has never had its girls' shower room used. This is because of the omission of a central drain,* which results in flooding (339).

* A similar problem exists at J.H.S. 142, Bronx.

Bernard Kaback, principal of J.H.S. 140, Bronx, at a private hearing discussed a similar problem at his five-year old school. Although the school is designed with rather elaborate gymnasium shower facilities, these are never used. Because the school has no attendant it cannot permit the boys or girls to use the showers. Even with their popular evening center, the girls' facilities still go unused and the boys' locker room and showers are used very little. Mr. Kaback spoke of "some neighboring schools" where the same problem also exists."*

The \$7,500,000 Bronx High School of Science, in addition to its many other complaints, actually has two chemistry rooms which have *sinks but no plumbing*. The plumbing contractor testified at the public hearing. He introduced into evidence** a written change order from the Bureau of Construction dated February 20, 1958 ordering the omission of such piping work. Furthermore, the contractor stated that at the time he was prepared to install the plumbing he discovered that the laboratory tables had not even been ordered by the Board of Education. They waited "about a year and a half or longer" for the tables which never came (700).

13. Health Violations

The Commission's investigation revealed that even complaints of defects or omissions susceptible of easy and swift solution were disregarded by the Board of Education. The fact that such an omission constituted a health hazard, and an actual violation of the Health Code, apparently was of no consequence.

On October 14, 1959, the New York City Health Department placed a violation on J.H.S. 140, Bronx—a 1956 school—because of the omission of screens which caused an infestation of flies in the lunchroom and kitchen. Notices of the violation were sent to the appropriate Board of Education officials. Subsequent inspections on March 16 and October 7, 1960 revealed that no correction had been made and so the same violation was issued. Because nothing was being done, Principal Bernard Kaback wrote to Dr. Moskowitz, reminding him of these *three* Health Department inspections and the health violations outstanding (Pr. H. 11,665). Mr. Kaback's letter was not even answered as of May 15, 1961, the date he testified at a private hearing, and the condition remained unchanged (Pr. H. 11,666).

* This is equally true of swimming pools which are unused at some schools for the same reason.

** Commission Exhibit #53.

Custodian Thomas Greene of J.H.S. 51, Richmond, also reported to the Board of Education that the absence of screens in the cafeteria caused infestation of insects and flies. His complaints were similarly unproductive, although as with J.H.S. 140, Bronx, correction required no more than a simple installation of screens.

The shocking conditions of neglect and disrepair of the City's schools did not come into being overnight. Official school files maintained by the Board of Education bulged with correspondence and reports of physical defects which had existed for a long period of time and which demanded attention. And yet, as the Commission's public hearing approached, supposedly responsible public officials professed indignation and surprise at learning of these conditions.

This appalling state of affairs was not the product of any failure on the part of school personnel to notify appropriate Board of Education authorities. Complaints, letters and reports are meaningless unless they receive appropriate attention and positive action results. As has been amply illustrated, this Commission's intervention often produced in a period of days, corrections which had been sought for years. It is therefore evident that if complaints are treated quickly and efficiently, the physical condition of the City's schools can be safeguarded and properly maintained. It is only through sincere interest, diligence and prompt action that a recurrence of the conditions just described can be avoided.

IV. Administrative Inefficiency

A. Assessment of Responsibility

Certain faults are anticipated and usually found in all types of construction. Conventionally, there is a warranty period during which such defects are to be corrected at the expense of the contractor. Most of the work performed by school contractors is warranted for a period of one year, during which time the Bureau of Construction is under an obligation to discover any defects or omissions and to see that they are promptly remedied.

There are innumerable methods of classifying defects, but one which the Commission found useful in this area was a division between those defects where responsibility was admitted and those where responsibility was disputed. In the former area, there can be absolutely no excuse for failure to attend to the problem. And yet in case after case such defects went uncorrected for long periods of time, as has already been shown.

A large portion of the problems arose in the second area, i.e., everybody acknowledged the existence of a defect but at the same time disclaimed responsibility therefor. Until the early part of 1961 it was the stated policy of the Board of Education first to fix responsibility and then effect the repair or change. This policy rarely worked because there are few architects or contractors who appear willing to admit responsibility where the issue is less than clear cut. As a practical matter, such problems persisted for years and were ultimately corrected, if at all, at the City's expense.

The new Board policy, announced during the Commission's investigation, is to effect the repair without delay and then determine who shall be held responsible. Such a system has at least one major virtue: undesirable conditions will be repaired speedily. As for the subsequent assessment of responsibility, there is no reason to assume that acknowledgment of error will more readily be made. However, the new policy of backcharging demonstrates that the Board of Education is finally making affirmative use of long dormant contractual rights.

B. No Policy of Backcharging

The past failure to adopt a firm policy in connection with assessment of responsibility has not been without cost. Probably the most serious cost to the City has been an intangible one, for who can place a dollar value on a fire hazard which has gone uncorrected for five years? Who can place a dollar value on the continuing health hazard created by inadequately heated classrooms, where temperatures range as low as 25 degrees below the legal level? Who can assess the impact upon children's minds when they are trapped in a classroom because of a defective lock? Happily, hazard did not often combine with injury.

There were also other significant costs—dollar costs. As previously indicated, it would require the long-term services of professional engineers and architects to estimate even roughly the dollar cost of the Board's failure to enforce its contractual rights. The Administrator of the Department of School Buildings, Jules Haut, testified that for more than a decade he has recommended backcharging of contractors and architects, but requisite administrative approval was always withheld. Since the announcement of the Commission's public hearing, the Board of Education has prepared a number of reports studying contract compliance at randomly selected schools. The Commission has received eight of these; they indicate that approximately \$810,000 will have to be spent in order to make

the schools conform to specifications in certain specific areas of construction.* Most significant is the fact that the oldest of these schools was opened for receipt of students on October 1, 1958.

A number of lawsuits have been prepared against contractors by the Board of Education since the Commission's hearing. One suit alone, against the Caristo Construction Corporation, is for \$500,000 in connection with certain contract deviations in the Aviation Trades High School.** In some instances contractors have voluntarily agreed to make changes at their own expense to avoid the need for court action.

C. Poor Liaison

Another very serious shortcoming was the lack of liaison and cooperation with the Board of Education. After expiration of the conventional one year warranty period, the Bureau of Construction would often disclaim responsibility for a defect and charge that it was up to the Bureau of Plant Operation and Maintenance to make the correction. The maintenance people in turn usually claimed that the problem should have been corrected during the one year warranty period, when the Bureau of Construction had exclusive jurisdiction and responsibility. The former Board of Education Superintendent of Housing proved ineffective as an arbiter between the two divisions despite the fact that he was their superior. The correspondence which follows requires little editorial comment. Although lengthy, it is essential to portray accurately and fairly the picture of administrative chaos and confusion which marked the relationship between the Superintendent of Housing, the Superintendent of the Bureau of Plant Operation and Maintenance, and the Director of the Bureau of Construction.

1. *Diedrich F. Lehnert*** to William H. Correale**** dated February 24, 1958:*

"It is our opinion that all violations (Fire, Labor, etc.) should be brought to the attention of this Bureau once a New Building has been placed into operation and turned over to a custodian. Otherwise, there is no way for us to alert the custodian to any hazardous

* The reports indicate that only limited inspection was made by the special inspection teams sent out by the Board of Education.

** See p. 153, *infra*.

*** Mr. Lehnert was then Superintendent of Plant Operation and Maintenance. He retired on April 8, 1960.

**** Mr. Correale was Director of the Bureau of Construction. He retired on August 21, 1959.

conditions or restrictions imposed by City Agencies and thereby possibly avoid unnecessary accidents until the violation is removed.

"Our experience indicates that some of these violations go on for years before they are corrected. In other instances, they are removed and we are not informed about the dismissal.

"We would appreciate any suggestions you may have which would provide closer cooperation between the two Bureaus insofar as violations are concerned."

2. *Diedrich F. Lehnert to David H. Moskowitz* dated June 17, 1958:*

"We wish to call your attention to the lack of progress being made in connection with the defective masonry reported to your office for several new school buildings. In some instances this problem has been reported over two years ago.

"We have the special comments you have written and also your distinct directions to the Bureau of Construction. This is, in our opinion, a serious matter and requires more positive action.

"At every meeting we keep on hearing that progress is being made or that specifications are being prepared. Several months ago, as I recall, we were told that specifications were ready, however no results are evident to date.

* * *

"We first called your attention to this problem of defective masonry about two years ago in reference to P-172-Q. For your information, and as an indication of the delays experienced in getting this work underway I submit herewith a chronological history of the defective masonry at P-172-Q:

"1—In your letter dated March 27, 1956 you indicated that a hazardous condition exists at this school and requested that we send our inspector to find out just what is urgent.

"2—In our letter of April 18, 1956 we advised you accordingly.

"3—In our letter dated May 8, 1956 we advised Mr. Correale concerning the joint inspection made at this school on May 4, 1956 in line with your request. We indicated that immediate action should be taken to remove the hazardous condition reported. A copy of this letter was forwarded to your office.

* Mr. Moskowitz, was then Associate Superintendent of Schools in charge of Division of Housing.

“4—In our letter June 5, 1957 (sic) we transmitted two letters from Emery Roth & Sons, Architects, and indicated that no specific solutions were given by the architect. Moreover, there was no indication as to who would be responsible for the defective work that developed at this school.

“5—In letter dated July 3, 1956 Mr. Correale advised you concerning this matter and indicated that the cause of the defective masonry is design. He advised in part as follows:

“The cause of spalling bricks and horizontal cracks is design. It is proposed to correct this situation by cutting out the joints and rebuilding the masonry and then observe the result over a period of time.’

Please note this is almost two years ago.

“6—In our letter dated July 19, 1956 we again advised you about this matter and suggested that the Bureau of Construction prepare all the necessary plans and specifications.

“7—In our letter dated September 19, 1956 we indicated that the condition had worsened but nothing had been done to date.

“8—In Dr. Swartz’ letter dated September 24, 1956 he advised Mr. Correale in part as follows:

“Will you please give this serious problem your immediate consideration and let us know what the results are.’

“9—On October 4, 1956 I again advised you concerning this matter and indicated that more than a year had elapsed and nothing had been done to undertake the remedial work.

“10—On October 9, 1957 I again advised you indicating that we could not assume any responsibility on this matter and that it might be advisable to close down part of this building, due to the condition that had developed.

“11—On October 14, 1957 I again advised you on this matter. I indicated that the building was opened in September 1954 and at that time the parapet wall of this building was cracked and leaking.

“12—Your letter dated October 21, 1957 to Mr. Correale advised in part as follows:

“This is a hazardous condition and should not be permitted to go on indefinitely. Please report promptly.’

"12—On November 26, 1957 I again called your attention to this matter.

"13—Your letter to Mr. Correale dated December 5, 1957 advises as follows:

"'Will you please inform me immediately whether the specifications for the correction of the hazardous parapet wall condition at P-172-Q has been completed. If it has, kindly send a copy to this office.'

"14—Your letter dated December 24, 1957 advises Mr. Correale in part as follows:

"'The defective condition of parapets at P-217-Q and P-172-Q has been called to your notice repeatedly by B.P.O.M. and this office. Mr. Welch of your Bureau inspected these schools and must have reported to you.

"'Please give these items your immediate attention. Kindly send copies of your written notification to the contractors to this office.'

"15—In our letter dated March 18, 1958 I again advised you about this matter and indicated that no remedial action had been taken. I advised in part as follows:

"'This matter of the parapet wall was one of the first items to be discussed at the meeting held in your office concerning defects in new buildings. This was brought up from time to time at all meetings, however, we were assured that the Bureau of Construction was preparing the necessary designs and specifications to remedy this situation.

"'It now appears that no progress has been made although your office has given the Bureau of Construction specific instructions.'

"It is evident from the above that no attention has been paid to your instructions although you have specifically advised the Bureau of Construction to remedy this situation.

"In the case of P-122-X you directed this office on December 18, 1957 to proceed to take care of the hazardous condition.

"We proceeded accordingly and in our letter dated April 24, 1958 we advised you that the workmanship was not in accordance with the specification. We had the defective brickwork

removed and made a thorough examination. We also submitted a photograph indicating that there was nonconformance. We also indicated that this matter should be turned over to the Bureau of Construction and that 'non-estoppel' clause be invoked.

"At the last meeting of the Monthly Follow Up Conference, Mr. Peterson indicated that he proposed to have a contractor replace the brick without correcting the inherent condition at this school. This, in my opinion, is inadvisable. It is the contractor's responsibility to correct this situation since he is responsible for the brickwork being erected contrary to the requirements of the specifications, as outlined in our letter dated April 24, 1958.

"We again urge that more positive action be taken at this time, we should not wait two years or more before any action is taken. Matteris (sic) of this type wall are bound to result in criticism if prompt action is not taken."

3. *William H. Correale to David H. Moskowitz, dated November 14, 1958:*

"As far as the economics are concerned, if we take the 50-year life, it would appear that it would be cheaper for us to take the necessary corrective action, based upon Mr. Liebeskind's estimate. However, the fact does remain that if we attempt now to go into the schools which contain fixed hoppers and start work on the windows, we not only would be disrupting the activities of the school for an extended period, but we would also stir up a public reaction which would be far from beneficial. I, therefore, am of the opinion that we ought to settle this matter by asking B.P.O.M. to do the best it can with window cleaning under the circumstances. I am not apologizing for the mistakes of our architects. I am merely trying to recognize the fact that we are now faced with a situation which at best is embarrassing. I, therefore, recommend that we do not attempt this corrective work at this time."

4. *In Mr. Lehnert's letter to Dr. Moskowitz on December 2, 1958, he refers to the matter discussed in Mr. Correale's letter of November 14, 1958:*

"We cannot possible (sic) agree with Mr. Correale on this matter. We cannot direct our custodians to clean these windows since it would be in direct violation of the State Labor Department.

"If we issued such directions we would be held responsible if accidents occurred. Furthermore, our custodians would experience

difficulty in obtaining compensation insurances if they in turn were to permit their employees to clean these windows contrary to the regulations of the State Labor Department."

5. *In Mr. Lehnert's letter to Dr. Moskowitz on December 29, 1958, after discussing specific violations for a number of pages, Mr. Lehnert concludes:*

"This matter clearly indicates that very little has been done to resolve this entire matter. Our study also indicates that while violations were filed with the Bureau of Construction, *the same design continued. In fact, there are buildings now under construction where the same violations may be anticipated.*

"For your information, I attach hereto a copy of a summary of violations which we submitted to the Bureau of Construction over a period of years and we have yet to receive any notification that the violations have been removed.

"This covers 95 schools or a large majority of the schools erected since 1953. We realize that in some cases, the violations have been removed but we have not been officially notified. We assume that every time we send a violation over to the Bureau of Construction, they would investigate and arrange to remove violations. For the reason that we do not receive notifications, we then started to notify your office as the case when we sent you a tabulation of the violations with our letter dated January 22, 1957. Some of these violations are on the present agenda of the committee. Others have not been placed on the agenda but may still be open.

"We wish to reiterate our decision on this entire matter of violations.

"It is the responsibility of the architects who design these buildings to be familiar with the State Labor Law which has been in existence for many years. For if mistakes have been made, they should be rectified by those architects. We should not be burdened with preparing plans and specifications to take care of these violations nor is it advisable as previously indicated to let contracts for outside window washing. It must be realized that the employees of the custodians are not experienced window cleaners. All safety precautions should therefore be taken. We should not be a party to a violation.

"May I therefore urge that you again reappraise this situation and direct the Bureau of Construction to report on the tabulation attached hereto in each case. This can only be done by inspection at each school. The fact that a violation is removed, does not solve

the problem. Outside cleaning will still be required as indicated in the restrictions noted above. This means annual contracts for each case. Sooner or later, we must fact (sic) this problem with the Board of Education. It is the responsibility of the agency who supervised the planning of these schools to resolve this problem without further delay."

6. *Dr. Moskowitz to Mr. Lehnert, dated January 15, 1959:*

"I reply to your unsigned letter of December 29, 1958. Because of lack of facilities I regret that I cannot answer this five-page, single-spaced letter point by point. All I can do is generalize as follows:

* * *

"I have ruled several times in the past and I repeat it again as follows. For a long time the entire situation was so muddled and so complicated with correspondence passing back and forth resulting in no concrete accomplishments that I decided on a cut-off point, 1956. (See minutes of 12/10/58 for details).

"On this basis you were to assume responsibility for correcting all the shortcomings reported before 1956 (1955). Mr. Correale will be responsible for correcting all legitimate shortcomings in schools occupied after 1956. (1955).

"Several times in the past I approved your removing fixed ventilators which automatically would clear up the violations. The fixed ventilators were removed; therefore there are no more bases for violations. Yet your assistants continue to bring up the question. Won't you please have them drop the matter.

"Starting on the bottom of page #2, you begin to introduce additional schools which were never listed before. Should there not be an end to this? Some I am sure, on second reading, will seem very petty to you. For example P-74-Q has 14 windows that can be cleaned by using ladders. The rest of the school has violation-free windows.

"Several of the schools you list must have windows cleaned by using ladders. It is obvious we cannot change the location of these windows. If anchors are missing, the minutes of 12/10/58 ask that you and Mr. Correale place anchors, on the basis of the 1956 cut-off.

"The question of schools still being constructed with violations has been discussed several times. Mr. Correale explains that this occurs only in cases where plans were drawn before it was learned that certain designs were open to violations. It takes about two years to build a school which takes us back to the cut-off year—1956.

Therefore it is still possible that a school opened in 1958 may have window violations. I am assured by Mr. Correale this will not be so in the future.

"I am anxious to clear up this whole situation. This cannot be done by writing letters back and forth. Therefore decisions must be made. I know you will do all you can to cooperate."

7. *Morris Liebeskind* to Diedrich Lehnert, dated January 23, 1959:*

"I discussed the matter of violations in the letter which I submitted to you for signature dated January 20, 1959. This gives a summary of the Follow-Up Conferences held in Dr. Moskowitz's office on December 10, 1958.

"You have not signed this letter to date. However, if you will please note this is not just a matter of 18 violations, but it now becomes a matter of 76 schools.

"It, therefore, becomes a tremendous task, if you want my office to handle this. In my opinion, all these violations should be sent to the Borough Offices together with your instruction that there should be no additional custodian cost incurred because of these violations.

"I am also returning the letter received from Dr. Moskowitz dated January 15, 1959 on the general matter of violations.

"It now appears that the Division of Housing has again changed their mind. They issued new regulations and now wish us to take over this entire problem.

"I do not wish to continue writing letters for your signature unless you give me a definite policy to follow, so that I may be guided accordingly.

"Dr. Moskowitz evidently has not followed this matter up carefully. It has become a muddled situation because nothing has been done to get the violations corrected. For years the Bureau of Construction has neglected the violations and now we are faced with this entire problem.

"I agree with Dr. Moskowitz when he says 'For a long time the entire situation was so muddled and so complicated with correspondence passing back and forth resulting in no concrete accomplishments that I decided on a cut-off point, 1956.'

"Certainly the muddled situation is not of our doing. It can be attributed to others, since they did not follow the directions previously given by the Division of Housing. Dr. Moskowitz himself evidently has not read all the correspondence, many of which have not been answered to date. Some of the directions issued by the

* Mr. Liebeskind was Deputy Superintendent of Maintenance at the time.

Division of Housing have been changed periodically as you well know. We have letters on the previous directions and now Dr. Moskowitz has changed them again after two months.

"Therefore, before I can answer any correspondence of this type, I think that I should receive a definite policy for the position we should take on matters of this type. I could answer this letter and justify everything stated in our own correspondence. However, it appears that this will do no good but I still feel that it would be well for you to answer this letter, so as not to give the impression that we participated in this muddling affair.

"We have a similar situation now with the other items. The latest directions are to the effect that we are responsible for all design errors. We are to take care of them regardless when the building was erected.

"You and I have both stressed this on several occasions at the meetings. While we went away assured that something will be done, very little happened. The result was that the meetings were actually a waste of time, in my opinion. Only verbal statements were made and when we got the minutes, very little was said in the minutes, about what actually happened.

"I know it to be a fact that schools are still being designed with built in violations. Dr. Moskowitz raises this point that this will be corrected, but we received such assurances 2 years ago and perhaps before then. For your information, one of the recent reviews we made on final plans and specifications again indicated that they were building the same type of windows with built in violations. This was reported by Mr. Liebowitz and the architect was very happy to hear about it. We have been stopped by the Division of Housing in writing letters to them on our reviews. For that reason, I have discontinued spending a great deal of my extra time in reviewing plans and now depend on Mr. Liebowitz to review same with my general approval and supervision.

"I, therefore, await your advice as to the window violations listed in your memo of January 21st also as to the general position and policy that this bureau should take in reference to this general overall problem.

"I trust that you will review the letter I dictated January 20, 1959. If we do not answer this, it will appear that perhaps we have been at fault in connection with this tremendous build up of items which now the Division of Housing wishes to discard because as indicated in the minutes of the meeting that there is 'the danger of

misunderstanding if such changes were picked up by unfriendly hand...'

"One further comment is that we must be careful to adhere to our position, since these matters are gradually coming to the front as was the indication at the last meeting of the Committee on Buildings and Sites."

This letter writing between the Director of Housing, the Bureau of Construction and the Bureau of Plant Operation and Maintenance over a period of eleven months vividly illustrates the complete lack of effective liaison and the resulting confusion over responsibility and means for resolution of basic problems by these divisions within the Board of Education.

In theory, all this should have changed when the organizational structure was entirely revamped in September 1959. Unfortunately, no evidence of such change was noted prior to early 1961, when the Board of Education took affirmative steps in response to the Commission's investigation.

D. Repetition of Errors

Another manifestation of administrative inefficiency was the frequent repetition of admitted design and construction errors. Despite adequate notice of certain design defects, new schools were built incorporating the prior defects.* The Bureau of Construction was not equipped to review the thousands of blueprints submitted by private architects, and as long as private architects were not held responsible for previous errors, there was little protection for the City in terms of checks and balances. The Director of Architecture testified that there was almost no review of private architects' plans (Pr. H. 2226-30).** This is not to suggest that any of the design defects were intentional. But there were a surprising number that failed to comply with the Labor Law, for instance.

The New York State Industrial Code, Rule Number 21-6 of the Regulations promulgated thereunder, requires a windowsill of four or more inches in depth before a window cleaner can be authorized to perform his work.*** It is perfectly permissible to design a window with a sill less than four inches in depth, but alternate means

* See correspondence referred to on pp. 113-121 *supra*.

** The Board of Education has in its full-time employ a staff of architects who also design new schools.

*** Although this rule went into effect on November 4, 1955, the State Department of Labor had previously enforced the same standards. While on the subject it should be noted that as of March 1, 1961 there were 169 schools with window violations, many of them with multiple violations (433).

of window cleaning must be provided. Certainly, it would be a design error to call for a sill one inch in width and then require window cleaning anchor bolts in such windows, for said anchor bolts could never be legally utilized under the circumstances. Unfortunately, in addition to a cost of thousands of dollars per school for such bolts, there is always the possibility that a custodian will unwittingly permit his helpers to clean a window in violation of the Labor Law. Such a situation did in fact arise at P.S. 40, Manhattan, a school completed in 1959 (Pr. H. 3566-69).

Inadequate heating proved to be another area where errors in design were repeated. Most serious of the problems caused by inadequate heating are health hazards, and custodians testified that children were forced to wear overcoats in classrooms.* Other problems generated by inadequate heating are those relating to excessive use of heating apparatus. In a number of schools, the regular and emergency boilers must be operated twenty-four hours a day in order to maintain even the inadequate heat provided. The longevity of such expensive equipment is thus seriously impaired, and the fuel bills are undoubtedly much higher under such circumstances.

For years the Board of Education did little more than add these conditions to lists of work to be done. Unfortunately a substantial part of the work was never performed, for the old policy of first ascertaining responsibility and then repairing often proved to be an insuperable barrier. Contractors claimed inadequate design, architects claimed poor construction, and the children continued to spend winter after winter in cold classrooms. Despite the awareness of these defects, plans for new schools were approved where the proposed school construction contained the same inadequacies.

Mr. Fred Hanasek, Chief of the Heating and Ventilating Division, Bureau of Construction, testified that the review methods employed by the Bureau of Construction would not assure detection of prior errors or prevent repetition thereof (Pr. H. 8485).

E. Extent and Gravity of Conditions Unknown

Probably the most serious of the administrative deficiencies was that which permitted the Superintendent of Construction (Project Superintendent in the employ of the Board of Education) to be almost the last word in the approval of school construction. The Project Superintendent was granted powers and authority which often exceeded his capacity, and as a practical matter the review of his work was minimal.

* See pp. 84-87 *infra*.

1. Inadequate Inspection of Work and Materials

In theory, the Project Superintendent was supervised by a General Superintendent, but the General Superintendent often had as many as ten new schools assigned to him. Two factors must be considered in assessing the availability of the General Superintendent to resolve problems. First, the Project Superintendent had to be able to recognize a problem, and second, he had to be willing to refer it to his General Superintendent, for in so doing he acknowledged that he was unable to resolve it. Therefore, for all practical purposes, the General Superintendent played a relatively minor role in the supervision of individual school projects.

Usually the Mechanical Supervisors, those responsible for the Heating and Ventilating, Electrical, and Plumbing and Drainage work, were assigned to a large number of schools, so that their inspections were necessarily limited in scope and frequency. As for mechanical supervisees, here too the old problem of too much for too few reared its head. In the electrical field, for instance, the senior electrical inspector would often be assigned ten to fifteen schools at one time. Difficult though it is to conceive, there was no full-time Electrical Inspector in a school where the electrical work alone exceeded one million dollars (Pr. H. 9056-7). Electrical inspectors had between ten and twenty schools assigned to them at one time, so that the time available per school was very limited. Similar conditions prevailed in the other mechanical trades, although the problem in Heating and Ventilating, and Plumbing and Drainage was apparently less acute. An almost incredible situation existed in the inspection of structural steel. The Board of Education had only one man to inspect this work in all five boroughs.

It must be stressed that in construction work the most substantial cost components are concealed after completion. Once walls are sealed, it is extremely difficult to determine if the various contractors have conformed to specifications, for most plumbing, electrical and heating work is not visible. Even if it were assumed that all Project Superintendents are qualified by training and experience to supervise and resolve the problems of a multi-million dollar construction project, there is an immutable law of physics to be reckoned with. A typical elementary school encompasses some 32,000 square feet, at ground level alone, exclusive of play areas. Within this area, there may be ten, twenty or thirty operations being performed simultaneously by a hundred workers. It is not physically possible for one Project Superintendent to supervise and oversee all of these operations. Under the traditional inspection system, this un-

doubtedly placed in the path of many contractors a temptation to "cut corners" particularly when the contractors knew that their work would never be re-examined.*

For the most part, the only additional checks for contract compliance were the punch lists prepared by the school custodian, and of necessity, his observations were limited to visible or operational defects. Basic changes were made by the Board of Education in its inspectional system in the months immediately preceding the Commission's public hearing. The new method of conducting inspection after construction, coupled with a suggested vigorous enforcement of the City's contractual rights should go far in increasing contract compliance, particularly when the cost of correction usually far exceeds the cost of proper performance in the first instance.**

2. Inadequate Training

The subject of inadequately trained inspectional personnel requires further comment. Assessment of responsibility for this condition involves one of the oldest and most basic problems confronting governmental agencies which cannot or are not prepared to pay salaries commensurate with the skills they hope to employ. While this situation is not unique with the Board of Education, it must bear a heavy share of responsibility for not doing the best with available personnel. No provision was made for an indoctrination program to aid new employees. In-service training or refresher courses are relatively simple to administer and usually pay tremendous dividends in terms of employee morale and efficiency. These too were lacking. The "go to it, sink or swim" attitude displayed by the Bureau of Construction for so many years was simply not capable of producing desired results.

Mr. Morris Liebeskind, Deputy Superintendent of Maintenance, early recognized this problem and regularly brought it to the attention of his superiors. In his Annual Report submitted to Superintendent of Maintenance Diedrich F. Lehnert in August, 1959, for example, he stated as follows:

"We reviewed specifications prepared by inexperienced men in the Borough Office. We note that in some cases the new men were assigned the most complicated jobs. This meant that

* Detailed testimony was given by a former Bureau of Construction electrical inspector concerning specific deviations from specifications which could be made in the absence of a full-time inspector (Pr. H. 9053-6).

** See testimony of Jules Haut, Administrator of School Buildings (1099-1100).

considerably more time was spent in reviewing. In certain cases, a portion of the specifications had to be re-written. (P. 3).

* * *

"The most serious situation is in our construction unit. As indicated, about 70 percent of the dollar value is in the construction unit. This is the unit with our most inexperienced men . . . P.8).

* * *

"I also advised the Borough Superintendents to set up a training program on the principles of general construction. I do not know whether this has been carried out but, in my opinion, it is very important. I have found that the men that we are getting in have no experience whatsoever in Building Construction Work. Our Civil Engineers may have had experience in certain construction such as dams, subways, bridges, etc. This does not make them competent in Building Construction Work. In fact, some of the men have had difficulty in reading architectural plans . . ." (P. 19).

One Superintendent of Construction had a background of thirty years as a carpenter. He had no training in engineering and his formal education ended before completion of elementary school. He was assigned to Research and Development for about a year, during which time he allegedly wrote specifications and prepared charts. At a private hearing, however, he was unable to recall a single specification which he had written (Pr. H. 6531-4) or a single chart on which he had worked (Pr. H. 6541). In this instance, the lack of an elementary school education cannot alone be blamed for such gross inadequacies, although it is likely that the particular individual's background does render him unfit to perform his current assignment. Thirty years as a carpenter does not train one to read and correlate complex blueprints and plans. In private industry, the erection of a multi-million dollar structure is traditionally supervised by professionally trained engineers or architects.

Regrettably, a substantial number of the inspectional personnel do not appear to possess training of the requisite type. This is not the time or place to assess the adequacy of the Civil Service examination for the job title, to determine whether the examination adequately tests for the skills required or whether it in fact effects a compromise, cognizant of the relatively meager salary offered for such skills. However, none of the foregoing problems prevents the

Bureau of Construction from more fully utilizing the services of its employees by a studied program of internal training and indoctrination. The failure to institute such a program is inexcusable, and the resulting damage incalculable.*

V. Violations of Law and Improper Practices

A. Private Architects Designing Schools for the Board of Education

1. *Political Influence in Award of Architects' Contracts*

Following site selection, the design and preparation of plans by the architect is the first major step in construction of a school. Although the Board of Education has a sizeable staff of full-time architects in its employ, the magnitude of the school construction program during the past 10 years required the use of private architects as well. Each year, the Director of the Bureau of Construction would determine which schools were to be designed by his own staff, and which by private architects.

The selection of a private architect is a matter of considerable importance. On his shoulders rests the initial responsibility for the safety, comfort and physical well-being of from 1,200 to 3,000 students per year for 50 or more years.** The skill and dedication of the architect's effort must be assured, and the criteria of measurement should be purely objective ones.

When Mr. William Correale occupied the office of Director of the Bureau of Construction his practice in the selection of private architects was to submit to the Board of Education the names of three or four for each proposed school, from which group final selection was made by the Board. During this period the Board paid architects' fees between five and six percent of the estimated cost of the new school. In many instances, there were fee negotiations with the architect, particularly in the larger contracts. During this same period, the State of New York and the New York City Department of Public Works were paying approximately 20 percent less to private architects for work of comparable complexity.***

* At a private hearing Mr. Haut stated that such a program was in the planning stages (Pr. H. 3708-9).

** The estimated life of a public school is approximately 50 years, although many have been used for terms substantially in excess of that number.

*** Recently the Board of Education standardized its rates, and while they are still higher than those paid by the State of New York and the Department of Public Works, the gap has been considerably narrowed.

There was a period of several months in 1959 when the Bureau of Construction had no Superintendent. In the interval between Mr. Correale's resignation and Mr. Weiss' appointment, the Director of Architecture submitted to the Board of Education the names of three different architects for each of two schools then about to be awarded to private architects. Full supporting data of their professional qualifications was provided. When Mr. Weiss assumed the office of Deputy Superintendent, he disregarded the above-mentioned procedure and submitted only one name to the Board, thus eliminating any possibility of choice on its part.*

On the basis of the Commission's investigation in this area, it was evident that political influence played a significant role in the selection of private architects to design schools for the Board of Education. It is a generally known fact that architects, along with builders, are among the large campaign contributors to both political parties in New York City. Examination of financial records of some 27 architectural firms revealed that all but one had made political contributions. An examination of the political contributions of these architectural firms most interestingly disclosed, in many cases, a very close correlation between award of Board of Education schools and substantial political contributions shortly thereafter.

As might be expected, many architects were reluctant to acknowledge that political contributions and political influence played any role in the award of their contracts, but a few were quite candid. One testified as follows:

“Q. Is it not a fact that you felt that political influence, having political influence, was necessary to obtain public construction?

A. That's right.

Q. —including work with the Board of Education?

A. That's right.

Q. There is no question about that in your mind?

A. No question about it.” (Pr. H. 14,051).

Another architect testified that he considered political contributions as business expenses, but that “Uncle Sam” told him that they were not (Pr. H. 8306). When asked why he considered them business expenses, he replied:

“A. Oh well, in doing City and State work, we work with a great many different individuals and when they are in politi-

* His proposals were followed by the Board.

cal office, we have felt that there wasn't anything to be concerned about, if they asked you to contribute something to the party, as a party worker, any more than as if they were any other person holding political office, and we assume that our relations with them will be somewhat easier as we go along.

If we're good natured to the extent of helping their party, that's about the size of it. We don't ask for any favors, but—

Q. You feel it will smooth the way?

A. Naturally." (Pr. H. 8306-70).

The impetus provided by this Commission's investigation made possible, in 1961, the institution of a new method of objective evaluation of private architects proposed by Mr. Haut. While such a system will go far towards eliminating past problems with private architects, the Board of Education should give serious thought to expansion of its own permanent staff of architects, so that eventually minimal resort will have to be made to private architects.* Implementation of such a plan will involve immediate and realistic evaluation of prevailing salary levels at the Board, for without very substantial up-grading, expansion will be impossible. In fact the Board has already experienced difficulties in filling existing vacancies.

There are a great number of conditions precedent to sound and economical school construction. Throughout this report reference will be made to such conditions, but none is more important than the one currently under discussion. It is absolutely essential that every phase of school construction be completely free from political taint or influence.

2. *Solicitation of Political Contributions by Bureau of Construction Personnel*

Civil Service Law §107:**

"No person in the civil service of the state or of any civil division thereof is for that reason under any obligation to contribute to any political fund or *to render any political*

* The major advantage to be derived from the suggested change is not limited to the savings in professional fees between private architects and Board architects. Primary reliance is based upon the fact that the cost to the City for change orders in schools designed by private architects has ranged from 10 to 20 times the cost of change orders in schools designed by Board architects. There are a number of factors which may explain this vast difference, not the least of which is the familiarity and knowledge gained by the Board architect by virtue of continuous work and specialization in this one area.

** This statute has not been interpreted judicially.

service, and no person shall be removed or otherwise prejudiced for refusing so to do. No person in the said civil service shall discharge or promote or reduce, or in any manner change the official rank or compensation of any other person in said service, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or service of any other valuable thing for any political purpose. *No person in said service shall use his official authority or influences to coerce the political action of any person or body or to interfere with any election.*" [emphasis added]

At the public hearing the former Director of the Bureau of Construction, William Correale,* and the current Director of Architecture, Michael Radoslovich, testified that they were specifically requested to solicit contributions for the 1958 United States Senatorial campaign in New York from architects doing business with the Board of Education. According to the testimony, the request was made by Seymour Gang, then Confidential Secretary to Charles Bensley, Chairman of the Committee on Buildings and Sites of the Board of Education. Such contributions were in fact solicited and a number of prominent architects responded thereto (68-72; 104-109).** When asked about his role in political fund raising, Mr. Correale answered:

"A. I made one move, which I have already said I regretted, but that was the one and only time that I was affected politically. I was happily free of it for a long time. When this thing broke, I did it." (Pr. H. 8263).

* * *

A. I didn't have any money. I had to have something to go to before I could walk out. It was a bad spot to be squeezed in.

Q. Is this correct? You did not feel that you had any choice in this. It was more or less a direction for you to participate in this campaign solicitation?

A. I felt that I could have said no. What the consequences would have been, I don't know. I couldn't risk—I had no one to go to for loans.

* Mr. Correale played a major role in the selection of private architects and the negotiation of their fees as is shown on p. 126 *supra*.

** At the time of the Commission's private hearing, Mr. Gang had completed three parts of a four-part examination for the new post of Director of Educational Affairs of the City of New York. He had been nominated for the post by Dr. Theobald. There were no other competitors. The Commission is advised that Mr. Gang is no longer being considered for this post.

Q. You had no protection in your job. You could have been removed any day?

A. Any day or any time.

It sounds like a weak excuse, but a man gets himself into that spot at least once in a lifetime. That was mine." (Pr. H. 8264).

As to Mr. Gang's power to instruct Mr. Correale, the latter testified that he believed Gang was speaking on behalf of Commissioner Bensley.

"Q. In your own mind, if you had felt free to make a decision, you would have told Gang that you did not want to do that?

A. That's right.

Q. You did not feel free to make that statement to him?

A. That's right.

Q. Did you at any time think that Seymour Gang was speaking on his own behalf, when he came to see you and Mike Radoslovich?

A. No. I didn't have that feeling.

Q. Whom did you think he was speaking on behalf of?

A. Mr. Bensley." (Pr. H. 8270).

* * *

Q. Would you have undertaken the solicitation if you felt that he was speaking only for himself as an individual, that is, Mr. Gang?

A. No.

Q. You would not?

A. No.

Q. Would you say that you were impressed by his official office in the Board of Education?

A. That's right." (76).

Mr. Radoslovich also testified that the solicitation of contributions was distasteful to him (Pr. H. 7817-8), and stated, "I felt it would not help my relationship with the architects with whom I had to work." (Pr. H. 7190).

In sum then, both individuals testified that the "assignment" was particularly odious, but that no alternative was presented in view

of Seymour Gang's official status. At two private hearings, Seymour Gang testified at length that he could not recall whether or not any meeting had taken place with Messrs. Correale and Radoslovich pertaining to the subject of political solicitations. He also could not recall whether or not the funds raised by any political solicitation were in fact turned over to him at Board of Education headquarters by the same Messrs. Correale and Radoslovich. Typical of Gang's answers are the following:

"Q. I will ask you one general question: Have you in the last five years engaged in fund raising for political campaigns either directly or indirectly? If you don't understand the question, I will be glad to paraphrase it.

A. Have I engaged in political campaigns and fund raising, either directly or indirectly? Is that what you are saying?

Q. Right.

A. I honestly don't recall, Mr. Okun. I am not lying to you. If I am not—

Q. You are not prepared to say that you did not engage in fund raising? You are saying that you don't recall. Earlier you said you did not.

A. I said I don't recall. To the best of my knowledge, I don't recall." (Pr. H. 7928-29).

* * *

Q. Have you at any time, Mr. Gang, turned over to Mr. Bensley campaign contribution checks?

A. Mr. Okun, I can't recall at any time turning over to Mr. Bensley campaign checks.

Q. Have you, at any time, turned over campaign contribution checks to Mr. Tom Shanahan or any messenger or delegate sent to Mr. Tom Shanahan?

A. I can't remember ever turning over any contribution checks to Tom Shanahan or messengers or delegates.

* * *

Q. . . . Has Commissioner Bensley, your employer, or your superior, ever requested you to solicit campaign contributions for any candidate to any public office in the State of New York?

A. I have no recollection, Mr. Okun, of Mr. Bensley ever talking to me about campaign contributions.

Q. You can't say that he never spoke to you?

A. I have no recollection of Mr. Bensley ever talking to me—

Q. You will just repeat that one phrase?

A. Mr. Okun, I don't recall Mr. Bensley ever having talked to me about campaign contributions.

* * *

Q. Have you ever participated in the raising of campaign contributions?

A. As far as I can recall, Mr. Okun, I have not. As far as I can recall, sir." (Pr. H. 8715, 16, 17).

Finally, Mr. Gang was asked to elaborate on the meaning of "I don't recall":

"Q. Before we conclude, I am going to ask you a simple question unrelated to any political contributions, unrelated to your job. I am going to ask you, as an intelligent and informed layman, who is about to be awarded a doctorate degree in education, what does the phrase 'I don't recall' mean to you?

A. It means, Mr. Okun, that to the best of my knowledge and as far as I can search my own memory, that I don't—I can't pinpoint—I don't know whether this thing—I can't recall whether this thing happened. I have no memory on it. That's what I am trying to say." (Pr. H. 7954-5).

At the Commission's public hearing Mr. Gang vacillated a great deal. At first, it appeared that his memory had improved considerably, and in response to the question:

"Have you ever asked anyone to solicit political contributions on your behalf or on behalf of anybody else?"

Mr. Gang replied:

"A. Mr. Okun, you asked me this question before in the Executive Session, and I gave it a great deal of thought. I would like to say that I have never, never asked anyone to solicit funds nor did I ever personally solicit funds for any political contributions for any campaign." (119-20).

However, as the examination proceeded, Mr. Gang's replies became more vague. In response to questions about the meeting with Messrs. Correale and Radoslovich, he testified:

"I have no recollection of this, but I unequivocally state, Mr. Okun, that I have never engaged in the raising of political funds."

Commissioner Grumet questioned the witness as follows:

"COMMISSIONER GRUMET: If it had happened you would recall, would you not?"

THE WITNESS: I probably would sir, but it is inconceivable to me that it ever actually happened because I know that I never engaged in this type of activity.

COMMISSIONER GRUMET: Did you or did you not?

THE WITNESS: No sir, I did not.

COMMISSIONER GRUMET: All right, now we have an unequivocal answer." (121-22).

It appeared then that the witness was back to a firm position. However, he again retreated to less positive ground when pressed further:

"THE CHAIRMAN: You are always talking about this could have happened. What we want to know is whether you remember whether it did happen or did not happen?"

THE WITNESS: I would have to say it did not happen, sir, because I have never been engaged in political activity, in fund raising.

THE CHAIRMAN: You base it on habit rather than memory, as I understand it.

COMMISSIONER GRUMET: Mr. Gang, you just made a statement where you said 'I would have to say that it didn't happen.' You see, we are having the greatest deal of difficulty in getting you to make a frank outright statement. Frankly, the impression that I get—I can't speak for my colleagues—that you are not being frank with us.

THE WITNESS: I am trying to be frank with you.

COMMISSIONER GRUMET: There is a constant—

THE WITNESS: The only thing—Mr. Commissioner, the only thing that raised a doubt in my own mind whether it could possibly have happened, was Mr. Okun's confronting me

and saying he had two sworn affidavits, two testimonies, saying that I—

COMMISSIONER GRUMET: Do you know that those two witnesses testified here this morning to that effect?

THE WITNESS: Yes, sir. He said this happened. This raised a doubt, but I have resolved this—this never happened.

BY MR. OKUN:

Q. Did you resolve that doubt between the time you were last here at a private hearing and this day? Is that when you resolved the doubt?

A. I have been resolving this doubt consistently.

Q. You did not resolve it either on March 28th, or April 12th, because on both of those occasions, is it not correct that you refused to enter a denial of the allegation? You refused to deny that it happened?

A. Mr. Okun, I knew in my own heart and my own soul that I never engaged in fund raising for political campaigns.

Q. Why didn't you deny it then, at the time of the private hearing?

A. Because it put a doubt in my mind whether I could have possibly done this." (127, 28, 29).

The evil of a system which requires a public servant to solicit political contributions from the very people he deals with on behalf of the City are too obvious to require any elaboration. There are those who seek to minimize the importance of these activities by Messrs. Correale and Radoslovich by pointing up that both individuals were in frequent attendance at political dinners. While public servants must be most circumspect in this connection too, there is a vast difference between attending a political dinner and soliciting funds for a political campaign. That difference should not be blurred or obscured.

B. Conflict of Interest: Outside Employment; Acceptance of Gratuities

1. *Outside Employment*

The Board of Education cannot claim that it was surprised by revelations pertaining to outside employment and acceptance of gratuities from contractors. The outside employment problem arose

in 1951, and as a result the Bureau of Construction required its then employees to complete the following form:

"Board of Education
of
The City of New York

"Sec. 866 a.

"(1) No . . . employee or person whose salary is payable in whole or in part from the City Treasury shall . . . act as . . . employee for . . . any person, firm, or corporation, interested directly or indirectly in any manner whatsoever, in or in the performance of . . . or involving any contract, work or business . . . the expense, price of consideration of which is payable from the City Treasury.

"I have read the above section of the New York City Charter and shall comply with it.

Date _____	Name _____
Title _____	Bureau _____ "

In 1959 the same problem was dramatically brought to the foreground when there was revealed the outside employment of Joseph Kalb, then head of the Civil Engineering Unit of the Bureau of Construction. A complaint was received by this Commission in December 1958, before it had instituted its investigation, and was forwarded to Louis I. Kaplan, the New York City Commissioner of Investigation for his attention.

The report of the City Commissioner of Investigation dated July 28, 1959 indicated a remarkable mathematical coincidence between monies paid by the Board of Education to the engineering firm of Farkas and Barron, and monies paid Joseph Kalb by Farkas and Barron for services allegedly rendered by Kalb, then head of the Civil Engineering Unit. On approximately 40 occasions over a period of three years the monies received by Kalb from Farkas and Barron were exactly 50 percent of the monies received by Farkas and Barron from the City. Kalb denied that the manner and sequence of payments reflected anything other than an internal book-keeping practice (Pr. H. 5771-72). He testified that he rendered legitimate engineering services for Farkas and Barron and that he had permission to render such services (Pr. H. 5758-62). Mr. Kalb's superiors denied ever granting such permission.* A point not to be

* Report of Department of Investigation, New York City, dated July 23, 1959, p. 11.

overlooked is that Kalb possessed and exercised the authority to hire Farkas and Barron on behalf of the Board of Education. (Pr. H. 5765). The report concluded with the following recommendations:

* * *

"(1) The Superintendent of Schools, Board of Education, institute appropriate disciplinary proceedings against Joseph Kalb based on his relationships with the firm of Farkas and Barron described in this report.

"(2) The Superintendent of Schools conduct a survey to determine whether other professional and technical employees of the Board of Education have been accepting payment as employee or consultants from persons or firms performing work for the board in any relationship.

"(3) The Superintendent of Schools issue a clear order as to the type of outside employment which may not be accepted by board employees.

"(4) A copy of this report be forwarded to the Superintendent of Schools for his information and appropriate action."

The report of the City Commission of Investigation was sent to Mayor Robert F. Wagner and it was Mayor Wagner's office that forwarded the report with the following letter of enclosure to Superintendent Theobald:

"July 28, 1958hm

"Dr. John J. Theobald
Superintendent of Schools
110 Livingston Street
Brooklyn 1, New York
"Dear Dr. Theobald:

"Re: Bd. of Education-Employment of
Joseph Kalb, Asst. to the Chief Engineer,
Bureau of Construction, by Farkas and Barron Consulting Engineers.
MR 11631

"I am enclosing a copy of Report No. MR 11631 addressed to Mayor Wagner under date of July 23, 1959 from Commissioner Louis I. Kaplan of the Department of Investigation, in connection with the above matter.

"This Report is submitted to you for your information and such action as you may deem appropriate.

"Will you kindly report to the Commissioner of Investigation, and to this office, the action taken or contemplated by you in connection with the recommendations contained therein.

Very truly yours,

SEAN P. KEATING

Assistant to Mayor

Encl. 1"

At the public hearing Deputy Superintendent Weiss acknowledged that although he received the report from Superintendent Theobald he took no action in connection with the recommendations. Mr. Weiss gave the following testimony as his explanation at the public hearing:

* * *

"Q. Do you recall, sir, very, very early in your tenure in your present position that you received a copy of a report prepared by the City Commissioner of Investigation, Mr. Kaplan, which was forwarded to the Mayor of the City of New York, who in turn forwarded that report to Dr. Theobald or Dr. Silver, as the case may be, and who in turn forwarded it to you? This report concerns one Joseph Kalb.

A. Yes, sir.

Q. Do you recall, sir, that the report suggested that disciplinary action be taken against Mr. Kalb?

A. I don't recall what the report contained. The report contained, as I recall it, some fee situation where an engineer was retained—

Q. Did you ever institute any disciplinary action against Mr. Kalb?

A. I forced Mr. Kalb to retire.

Q. Do you recall in that same report you were requested to establish standards for your employees?

A. I don't recall that.

Q. You do not recall that?

THE CHAIRMAN: What was the date of that report, Mr. Okun?

MR. OKUN: The date of the original Kaplan report, sir, is July 28, 1959.

A. I got that report, Mr. Okun, in November of 1959.

Q. Let me see if your recollection can be refreshed.

On Page 13 thereof it was recommended 'that the Superintendent of Schools conduct a survey to determine whether other professional or technical employees of the Board of Education have been accepting payment as employees or consultants from persons or firms performing work for the Board in any relationship.'

Further, '3. That the Superintendent of Schools issue a clear order to the type of outside employment which may not be accepted by Board employees.'

Was this forwarded to you by the Superintendent of Schools?

A. Yes, sir.

Q. Did you take any action in connection with those later two recommendations?

A. No, I did not. That referred to the Superintendent of Schools, Mr. Okun.

Q. Did not the Superintendent of Schools refer it to you, inasmuch as the men who were described in this report are under your direct supervision and employ?

A. As a matter of fact, the Kalb matter bothered me. I wanted to get him out. It was a good thing he did go.

Q. We are past Kalb now. We are on to the broader issue of all other employees.

Mr. Weiss, are you suggesting that possibly Superintendent of Schools John Theobald omitted to call this report to your attention?

A. No.

Q. He did call it to your attention?

A. He sent me—I think I got either a copy of the report or—

THE CHAIRMAN: Did you read it when you got it?

THE WITNESS. Oh, yes.

THE CHAIRMAN: But you didn't follow the instructions or recommendations of the Department of Investigation?

THE WITNESS: The instructions, as Mr. Okun reads them, related to the Superintendent of Schools.

THE CHAIRMAN: Why do you think he sent that on to you, in view of the fact that the man involved was under your jurisdiction?

COMMISSIONER GRUMET: Are you suggesting that Superintendent Theobald failed to promulgate such rule?

THE WITNESS: I am not suggesting anything, Judge.

COMMISSIONER GRUMET: But it is either/or; you can't have it both ways. You said it was referred to the Superintendent of Schools. Now we hear that the Superintendent referred it to you. Somewhere in between there must be some responsibility.

COMMISSIONER LANE: Mr. Weiss, did he send it to you for action, or just—

THE WITNESS: My impression, Mr. Lane, was Kalb—that's all I paid attention to, as a matter of fact—

COMMISSIONER GRUMET: Kalb?

THE WITNESS: Yes.

COMMISSIONER LANE: What I am trying to understand, if I can, is whether he sent it to you for action or whether he sent it to you merely for information. Do you have any opinion on that?

THE WITNESS: I imagine, so far as Kalb was concerned, it was for action.

COMMISSIONER LANE: As far as the others were concerned?

THE WITNESS: I have no opinion on that." (1274-78).

At private hearings, Dr. Theobald had only the dimmest recollection of this important report and was under the mistaken belief that it came from Mr. Weiss. He testified as follows:

* * *

"A. To the best of my knowledge, this did not come to me as a written report in any sense. It came to me originally as Weiss reporting it to me. Then I got some kind of a report that indicated salaries and I remember the salary that Kalb got from this outfit was apparently just half of what the others got." (Pr. H. 11,413).

Dr. Theobald did no more than turn over the report to Mr. Weiss. Dr. Theobald never rechecked to determine if Mr. Weiss had taken any action at all. (He had not.)

On May 10, 1961, some twenty-two months after Superintendent Theobald was advised to "issue a clear order as to the type of out-

side employment which may not be accepted by board employees" he was questioned on this subject at a private hearing:

"BY MR. OKUN:

Q. Dr. Theobald, do you know of any rules which prohibit outside employment of members of the Bureau of Construction? Let me amplify—instead of 'prohibit,' let's say 'limit.'

A. I don't have specific knowledge. I would have to look this up. The only thing I can say to you is that I know that Kalb had apparently been given permission by the chairman. I do not believe this is proper.

Q. Forget Kalb—and the chairman denied that he ever gave permission—Mr. Correale denied knowledge of that. In general, can John Jones, Superintendent in the Board of Education, engage in outside work?

A. I would not think he should. Now, I don't know what the law is. I don't know whether a man—

Q. I think the law is what you make it, up to a point. There is a City Charter which covers specific cases.

A. The law is not what I make it. The law is, for the most part, what was there before I got there, and it is a big body of law.

Q. Let me quote you, then, what Mr. Weiss' predecessor said. He said he didn't know what the law was, he had never known, and he had always been mystified by the problem.

A. I am saying to you that in a sense I don't know what the law is specifically on this. I would think that a prime criteria dealing with professional people would be that people could do outside professional work provided it did not impinge on areas that we were doing business with and provided, furthermore, that it did not interfere with their full conduct of their regular jobs." (Pr. H. 11,455-56).

On December 16, 1960, this Commission wrote Mr. Weiss the following letter:*

"Superintendent Joseph R. Weiss
Bureau of Construction
42-15 Crescent Street
Long Island City, New York
Dear Mr. Weiss:

"In connection with this Commission's investigation into the

* Introduced at public hearing as Commission Exhibit 70.

policies, practices, and procedures of the Board of Education, would you please provide us with the following information:

"1. Is there any policy of the Board of Education pertaining to outside employment of your personnel?

"2. Is there any policy of the Board of Education pertaining to receipt of gifts or gratuities by your personnel?

"If there is an official regulation or ruling on these subjects, please forward us a copy of same indicating the effective date thereof.

"Your prompt reply will be appreciated.

Very truly yours,

JACOB GRUMET
CHAIRMAN"

JO/cfg

In response to this letter, Mr. Weiss took his first formal action on the subject since assuming office on September 1, 1959, over sixteen months earlier. He distributed to his employees a mimeographed copy of the part of the City Charter, relating to the Code of Ethics and Conflict of Interest, with the following letter of enclosure:*

"January 4, 1961

"TO: The entire Staff of the Bureau of Design, Construction, Controls, Maintenance, Operation and Administration

SUBJECT: Code of Ethics

With the advent of the New Year, I wish to call your attention, as a routine matter, to the Administrative Code of the City of New York, in relation to the Code of Ethics, and to the Charter of the City of New York in relation to conflicts of interests.

The policy of the Office of School Buildings of the Board of Education is consistent with such provisions. Outside employment may be accepted under the conditions set forth therein. For your convenient reference, the pertinent sections of the Code and Charter are attached hereto.

I again extend my sincere wishes for a Happy and Healthful New Year.

/s/ JOSEPH R. WEISS
Deputy Superintendent of Schools

* Introduced at public hearing as Commission's Exhibit 69.

Copy of letter and pertinent
sections of Code and Charter to
each member of Staff."

In this area too, there is cogently displayed the type of administrative breakdown which has occurred in the Board of Education for so many years. The current administration can correctly state that it inherited a great many problems, and that it could not be expected to effect overnight changes in the low moral climate which had apparently prevailed for a number of years. But the current administration cannot avoid responsibility for refusing to treat the problem at all, particularly after it had been specifically called to its attention in a most forceful manner—from the Office of the Mayor of the City of New York.

Certainly, any personal relationship between the Bureau of Construction staff and school contractors may be a very significant factor in the quality of school construction. An improper relationship between the two, whether it be moral or legal, can result in substantial monetary and functional loss to the City. On the part of the Board of Education, failure to explore fully the relationship between contractors and school personnel would certainly constitute a serious error of omission. Complete failure to make inquiry into the relationship is a far more serious matter.

At both the public and private hearings, inspectional personnel acknowledged that they performed services for contractors building schools for the City of New York. One employee, formerly the Chief of the Civil Engineering Unit, worked as a consultant for the very firm he hired to perform services for the Bureau of Construction.* Another worked for a private architectural firm designing schools for the Board of Education (578; 581). Still another worked for a plumbing contractor whose very work he was inspecting on behalf of the Board of Education (599). The inspector saw nothing wrong with this service as long as he rendered a "fair day's work for a fair day's pay" (600). Another accepted a \$2,000 unsecured cash loan from a plumbing contractor (652; 657).

What is more significant than these instances of apparent violations of the Conflict of Interest sections of the City Charter** is the grim fact that Board of Education employees saw no moral conflict or wrong in what they did. Obviously, a sense of moral values cannot be created by legislative fiat, but the very least that an employer

* See pp. 135 ff. *supra*.

** Section 886.

can do is inform its employees of the specific ground rules to which they are expected to conform.

2. Acceptance of Gratuities

The Commission found that a substantial percentage of Bureau of Construction personnel accepted from contractors doing work for the Board of Education gifts of money or objects of value in excess of \$25. An indeterminate share of the blame for the wholesale improprieties found in these financial relationships must be attributed to "a head in the sand" attitude adopted by the Board of Education. The conduct of the Director of the entire school construction program, Joseph R. Weiss, will be dealt with in a later section in much greater detail, but it should be observed at this time that neither Mr. Weiss nor his predecessor drew an appropriate line in terms of their own personal acceptance of gifts from contractors. Inspectional personnel testified that the "front office" always observed the distribution of vast quantities of liquor and other presents during the Christmas season. The distribution of envelopes to personnel was also stated to be a very common practice (599), one conducted in a perfectly open manner.

Most common among Christmas gifts was whiskey, but also very widely distributed were turkeys, meat, wallets, serving trays, ice buckets and other modest household items. Very frequently distributed were cash gifts, allegedly in the amount of \$20 or \$25. Gift certificates were a popular choice among contractors where supervisory personnel were concerned. All construction managers and all but two general superintendents accepted gift certificates, and rarely, if ever, were they in an amount less than \$50. Most contractors claimed to have lost their gift lists, and in these instances only a few could recall the names of any donees. The largest school builder of all, Caristo Construction Corporation, was the largest donor of gift certificates. Its president, Vincent J. Caristo, testified that he alone made the determination as to the donee and the amount of gift, but that he could not recall the name of even a single donee (Pr. H. 7392).

The widespread acceptance of gratuities by inspectional personnel was marked by the unanimous denial thereof on the sworn questionnaires they were requested to submit to this Commission, despite the fact that the question was specifically put to them as follows:

"Did you, your wife and children receive any gifts either of

property or cash of the value of over \$25.00 during the preceding FIVE (5) years (excluding gifts from relatives)?

_____. If so, state date, nature and amount."

(Yes or No)

Not one of the inspectional personnel replied in the affirmative to that question, although a great many had received gifts which called for an affirmative answer. Moreover, a substantial number of the supervisory personnel also denied receipt of such gifts at their first appearance at private hearings, although when confronted with proof of such gifts many of them later acknowledged receipt and claimed that their memories had been "refreshed." It should be noted that references to gifts in this section have been limited to those either acknowledged by the employee or provable by other means. The conclusion should not be drawn that no other gifts were made.

C. Other Violations by Bureau of Construction Personnel and School Contractors

1. *Mechanical Trades*

School construction is traditionally divided into four parts, each of which is performed by a different prime contractor: General Construction, Heating and Ventilating, Electrical, and Plumbing and Drainage. All parts other than general construction are referred to as the "mechanical trades," and until the early part of 1961* were supervised by Bureau of Construction employees known as Supervisors of Mechanical Installations. There was an overlap of authority between the Mechanical Supervisor and the Superintendent of Construction, and their respective lines of authority were not clear. At the present time the Superintendent of Construction is in charge of all four prime contractors.

Until the early part of 1961, the role of the Mechanical Supervisors was a key one. These men enjoyed the highest supervisory field rank relating to three of the four independent contractors on every school construction project. For the years 1958 through 1960, the contract work performed by these trades in school construction was as follows:

	<i>H.&V.</i>	<i>Electrical</i>	<i>P.&D.</i>
1958	\$5,095,930	\$6,141,504	\$3,228,527
1959	3,431,995	3,661,992	2,368,850
1960	8,543,180	7,360,716	5,112,946

* At this time all four Mechanical Supervisors were transferred to other work. See organizational chart at p. 17 *supra*.

Only the general contractors were not subject to their jurisdiction, although the decision of a Mechanical Supervisor could certainly affect the general contractor. During most of the period of the Commission's investigation, four Mechanical Supervisors were responsible for the approval of the many millions of dollars of work performed by the aforementioned trades. These men were Francis Ficarra, William Sempell, Richard Freund, and Henry Wennik.

a. Francis Ficarra, Supervisor of Mechanical Installations

Ficarra acknowledged to this Commission that he had been the recipient of cash gratuities from twenty-eight contractors. The total amount of monies received from these contractors approximated \$3,000. Broken down by mechanical trade it works out to the following:

Plumbing: Ten out of ten major contractors were donors.

Heating and Ventilating: Six out of eight major contractors were donors. The six do between 80 and 100 percent of the work.

Electrical: Eight out of eighteen major contractors were donors. The eight do approximately 50 percent of the work.

For the most part, the cash payments ranged from \$25 to \$50. The largest single donor was D. J. Rice, Inc., the firm which performed between one-half and two-thirds of all the contracting work in the Board of Education in the Heating and Ventilating trades. This firm was in the habit of making annual Christmas gifts of \$200 cash to each of the four Mechanical Supervisors* (Pr. H. 7329). Most of the other contractors named by Ficarra denied making any payments, although a few did acknowledge them and several others admitted that it was "possible" that they had made such payments.

b. William Sempell, Mechanical Supervisor

At the private hearings, Sempell admitted that he had omitted from his questionnaire receipt of \$200 cash Christmas gifts from D. J. Rice, Inc. At the public hearing, Sempell attempted to change his story, but when confronted with his private hearing testimony, he acknowledged that he was unable to reconcile the two (642). Most discouraging to Sempell's proposed switch in testimony was the fact that at the private hearing it was he who named the donor in response to Commission Counsel's question about \$200 Christmas

* Further detail on this firm will be found on p. 146 *infra*.

gifts. Sempell also admitted that he occasionally received \$20 from Gerald Endres, President of Endres Plumbing Corp., a large plumbing contractor (642).

c. Richard Freund and Henry Wennik, Supervisors of Mechanical Installations

George Weber, the general manager of D. J. Rice, Inc., testified at private hearings that he personally, on behalf of his employer, transmitted \$200 in cash each Christmas up to the Christmas of 1959, to Messrs. Freund, Wennik, Ficarra, and Sempell (Pr. H. 7325-30). Mr. Weber further testified that he also distributed substantial monies to other Board of Education employees at Christmas time (Pr. H. 7335-41 and 11,639). The testimony of Messrs. Weber and D. J. Rice, the President of the corporation, indicates the existence of a long-standing practice with this firm to distribute at Christmas to all Board of Education employees (other than the Mechanical Supervisors) assigned to D. J. Rice jobs approximately \$20 worth of whiskey or an equivalent amount of cash (Pr. H. 7335-42; 7351; 11,626; 11,641-44).

At the public hearing, Mr. Weber attempted to modify his earlier testimony concerning the magnitude of the payments to the Mechanical Supervisors. He stated that his memory had been refreshed by reference to "records" since his appearance at the private hearings (616). In fact there were no original records which could have served to refresh Mr. Weber's memory, as the President of the firm had already testified at a private hearing that all such records had been destroyed during the course of a robbery in 1959 (Pr. H. 11,624-25). Further, Mr. Weber admitted that although he knew his original private hearing testimony was inaccurate he made no effort to correct it even when the very same subject was discussed at a second private hearing (623).

d. Frederick M. Grupp, Mechanical Engineer

Mr. Grupp, who worked in the Bureau of Construction headquarters building at Crescent Street, was the superior of the four mechanical supervisors for a substantial part of the period of the investigation. In the course of examination of the books and records of various contractors, Commission accountants discovered the name Frederick W. Grupp in connection with a \$2,000 loan from the Endres Plumbing Corporation. Grupp denied that he was the person named in the books and steadfastly maintained that he had never negotiated any loan from Endres or any other contractor doing

business with the Board of Education. A study of Grupp's finances revealed that a substantial amount of cash had been used as a down payment on his home. Grupp's first explanation was that the funds came from accumulated savings which had never been deposited in bank accounts. Eventually Grupp admitted that he had been lying and confessed that he had in fact borrowed \$2000 in cash from Gerald Endres, President of Endres Plumbing Corporation* (652-56).

Further, the books submitted to this Commission by Endres Plumbing had been altered to eradicate the name of Frederick W. Grupp. Inserted in its place was the name of Gerald Endres.

e. Mario Ammirati—Head of the Change Orders in Plumbing and Drainage, and Heating and Ventilating

Mario Ammirati was the Bureau of Construction employee who passed final judgment on whether or not a contractor in the Heating and Ventilating, or Plumbing and Drainage trades was being called upon to perform certain work in variance of contract requirements (change orders), and also to determine how much money should be paid the contractor for any extra labor and/or material. The Commission had received information that Ammirati made it a practice to demand 5% of the value of change orders which he approved.

A plumbing contractor testified that he wrote Superintendent Correale complaining of Ammirati's refusal to process a long-delayed change order in the amount of \$950. The letter produced no results (688) and the contractor again contacted Ammirati. At the public hearing he described what happened:

"Q. Will you describe the circumstances?

A. I had called Mr. Ammirati again and we were—we needed the money, and this was one of the items that we required, because we laid out—we spent the money on something else. And I asked him, 'What about this change order?'

So he said, 'I'll call you back in a few minutes,' and he called me back in about ten minutes and said he would act on this change order if I would give him some money.

Q. How much money did he ask for?

A. Fifty dollars.

* The only alleged installment repayment made by check followed the Commission's discovery of the loan. Grupp claimed that the other alleged repayments were in cash (660).

Q. How did you react to that?

A. I was quite annoyed because this was my money. The work was performed and I didn't see the sense of—see the need of giving him any money to get my own money.

Q. Did you protest?

A. Yes, sir, I did.

Q. Did he indicate 'This is the way things are done' or that 'It's par for the course'?

A. He did.

Q. What did he say?

A. He said—I don't recall the exact words, but in essence, that if we didn't pay him the money it would still sit there." (694).

Whereas the change order had been held up for almost three years (693), five days after Ammirati received the \$50 it was approved (696).

When Commission accountants undertook an analysis of Ammirati's finances, they discovered that he had spent substantial sums of cash over the years. In previous years Ammirati had engaged in other large currency transactions for which no satisfactory explanation was made:

1952—Cash deposit on house—	\$4,000
1958—Cash deposit on oil burner—	\$1,270
1958—Cash payment for auto—	\$1,300
1959—Cash deposit on second house—	\$2,000
1960—Cash payment for auto—	\$1,300

During the week of November 14, 1960, Ammirati made the following cash deposits in his bank account:

November 14, 1960—\$4,000
 November 15, 1960—\$2,925
 November 18, 1960—\$ 470

This money was used as a down payment on a piece of real estate which Ammirati acquired. When pressed for an explanation about the source of this large amount of currency, he testified at private hearing that his sister-in-law had lent him the money (Pr. H. 13,024). Upon examination, his sister-in-law denied that she had lent

Ammirati any such money, and further testified that she had been asked by Ammirati's wife to testify falsely that she had in fact made such a loan (1054-56). At the public hearing, when Ammirati was asked the source of these very large currency deposits, he either lost control of his faculties or feigned loss of control, and his outburst made impossible the continuation of his examination* (1028-30; 1034; 1038-39A).

f. Dierks Heating Co., Inc.

This firm has been the second or third largest contractor in the Heating and Ventilating part of public school construction for a number of years.

i) *Alteration of Books and Records*

The corporate books and records of this company were the most seriously altered of any that Commission agents examined and were sent to the Bureau of Technical Services, Police Department of the City of New York, for examination. Approximately 64 erasures were noted. In a great many instances the eradicated writing could be detected, while in others the eradication was so thorough that the original writing could not be raised. Typical of the book entries which were altered or defaced were those which originally indicated payments to "insp." or "inspector."

ii) *Payment of Bribes*

When two Special Agents of this Commission were sent to the premises of the corporation to serve a subpoena for the corporate books and records, they met with John Dierks, President of the Corporation. After the Commission agents identified themselves, Mr. Dierks remarked that he supposed they were there to learn about graft and corruption. When it appeared that he was willing to speak voluntarily to this subject, the Special Agents of the Commission, in the presence of Mr. Dierks, and in his full view, proceeded to take his statement as follows:

"Long Island City
New York, New York
January 12, 1961

"I John Dierks, President, Dierks Heating Company, Inc., 43-32 33rd Street, Long Island City, New York, gave the following free and voluntary statement to JOHN J. MOORE and HERBERT H.

* While waiting to be called as a witness at the public hearing, Ammirati was suspended from his post by the Board of Education.

RAYMONDE, who have identified themselves as Special Agents of the Commission of Investigation of the State of New York. I have been advised that I do not have to make a statement and that any statement made by me can be used in a court of law or before the Commission of Investigation of the State of New York. No threats or promises have been made to induce me to make this statement, and I have been advised of my rights to obtain an attorney.

"I, John Dierks reside at 208 E. 31st Street, Manhattan, New York. I am 76 years of age. I understand the English language.

"I state that about once a month, I would telephonically contact the Mechanical Trade Man, (Inspector) on various school jobs where my Company was performing services. This inspector would then instruct me to meet him in a designated area, and that I should be prepared to pay \$25 to \$35 so that the Heating and Ventilating work I contracted to do on various schools in New York area could be expedited and cleared and approved. I wish to state that it usually took me about 30 days to receive payment from N. Y. Board of Education, Bureau of Schools.

"I wish to advise that every month I would submit a requisition to the N. Y. Board of Education Bureau of Schools for each job completed during that month. As I have stated above, I would meet with various inspectors from the N. Y. Board of Education, Bureau of Construction, I would take them to lunch and then pay them \$25 to \$35 over the table. At the present time (1961) I have two school contracts for which I pay inspectors \$50 per month.

"In the year 1960 I had eight school contracts for which I paid inspectors approximately \$200.00. I had two (2) or three (3) contracts in 1959 for which I paid inspectors \$75.00.

"On numerous occasions after the job was completed on various schools I would pay the custodian of that particular school \$50.00 to clean up, so that the school would pass final inspection. My men refused to do this final cleaning work.

"I have read the above and one other page of this statement and it is true and correct."*

At the conclusion of the statement Mr. Dierks was asked to sign same but he refused (675).

At subsequent private hearings in this office, Mr. Dierks acknowledged that he had spoken with our agents on the subject, but indicated that he would neither sign any statement nor discuss the subject (Pr. H. 6280-84).

* Statement introduced at public hearing as Commission Exhibit 49.

Julian Borak, General Manager for the corporation, admitted at private hearings that he delivered envelopes to Board of Education employees at Christmas. When asked about the contents of these envelopes, he suggested sarcastically that they might have contained "laundry tickets." (Pr. H. 7990).

Reference to the organizational chart reproduced on p. 17, will point up the extreme importance of the foregoing facts. Conduct on the part of each of the five top personnel in the mechanical trades involved serious violations of law, and all five gave false answers before this Commission on their sworn questionnaires. The mechanical trades were marked by substantial financial dealings and payoffs between contractors working for the City and the Board's inspectional personnel.

2. Structural Steel Inspection

During the period of the Commission's investigation, Milton Zubatkin was the only structural steel inspector for the entire public school system in the five boroughs of this City. It was his job to inspect the structural steel at every new public school erected in the City. He testified that he had received cash presents from 38 contractors, in an amount approximating \$2,000. The range of payments was typically between \$10 and \$25 (572). Some contractors paid several times during the course of a job, while others paid at the end of the job or at Christmas. The contractors making such payments include most of those doing such work for the Board of Education.

3. Electrical Inspection

For some years David Fink has been the Senior Electrical Inspector for the public school system in the City of New York. Although he has had assistants from time to time, the bulk of the electrical inspection work has been his responsibility. An examination of his finances by Commission accountants revealed that in one randomly chosen year Mr. Fink spent a sum approximately 25% greater than all monies he had acknowledged to be available for living purposes. And this figure is based upon Mr. Fink's own very conservative expense figures.

4. Other Supervisory Levels

Reference to the organizational charts in Schedules 2 and 3 reveals that the construction managers and general superintendents had the

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highest supervisory responsibilities. While the subject of Christmas gratuities has already been discussed in some detail, it should be repeated that each construction manager and all but two general superintendents were recipients of gift certificates in amounts of \$50 or more from Board of Education contractors.*

One construction manager, Michael Pruzan, first acknowledged at a private hearing that he received a few smaller gift certificates from two contractors (Pr. H. 627). At a subsequent private hearing, he vehemently denied that he ever received any gift certificates from any contractors, and said that his first testimony must have been in error (Pr. H. 6716-18; 6738). The Commission later learned that he had also received a number of \$50 gift certificates from two other general contractors on at least three different occasions. On the morning of the public hearing when Mr. Pruzan was scheduled to testify, his wife appeared and indicated that he was hospitalized. She offered an affidavit from her husband in which he stated that his recollection had been refreshed to the point where he recalled the receipt and retention of gift certificates.** Mr. Pruzan retired on August 17, 1961.

5. *Benjamin Kurtz and Louis Schneiderman****

For a number of years the Board of Education made it a practice to make field inspections for the purpose of examining the work and material of prospective suppliers and contractors. Early in 1959, Benjamin Kurtz, formerly Chief of Shop Inspection and Expediting, and Louis Schneiderman, formerly Head of Shop Drawings, were sent to Miami Beach, Florida by their superiors in order to check on certain installations made by Artex Window Corp., a firm seeking approval for its windows on the Industrial Arts High School. It appears that both individuals were authorized to have their wives accompany them**** (745-7). After making a field inspection of actual installations in Miami Beach, Messrs. Kurtz and Schneiderman were to inspect Artex's manufacturing plant in Summerville,

* As previously indicated, each of the recipients failed to acknowledge the gifts on his questionnaire, and a number concealed them even at the private hearings.

** Affidavit dated June 30th, 1961.

*** Kurtz retired during the course of the Commission's investigation and invoked the Fifth Amendment at the public hearing (742-3). Schneiderman was suspended several months before the public hearing.

**** Mr. Kurtz had recently sustained a heart attack, and his wife was permitted to accompany him for this reason. Mr. Schneiderman's wife was permitted to make the trip to accompany Mrs. Kurtz.

South Carolina. Messrs. Kurtz and Schneiderman allegedly spent four or five days inspecting installations in Miami Beach (Pr. H. 3185). At the conclusion of such inspection, Mr. Schneiderman went to Summerville, South Carolina and from there back to New York. Mr. Kurtz omitted the Summerville, South Carolina part of the trip but falsely certified a visit thereto in a report he filed upon his return to New York City (Pr. H. 3297-98).

Mr. and Mrs. Kurtz remained in Miami Beach for seven days, incurring a hotel bill in the amount of \$468.71. Mrs. Schneiderman remained in Miami Beach for two weeks after her husband departed, and incurred a bill of \$1,092.56 for that period (Pr. H. 3299). The Artex Window Corp. paid these amounts as well as the bills incurred while Messrs. Kurtz and Schneiderman were with their wives in Miami Beach (755). Interestingly enough, there was available for inspection an installation in upstate New York. Therefore, the so-journ in sunny Florida was unnecessary (749-50).

6. *George Theiss, Retired Superintendent of Construction*

Mr. Theiss was the Board of Education representative during the construction of Aviation Trades High School, currently the subject of a \$500,000 lawsuit by the City of New York against the Caristo Construction Corporation, the general contractor. The Caristo Construction Corporation has apparently acknowledged that it deviated from the plans and specifications and that the installation was not as required. It relies in large part on alleged authority for this deviation provided by Superintendent Theiss. Mr. Theiss invoked the Fifth Amendment when questioned at the public hearing about his activities at the Aviation Trades High School, and any financial relationship he may have had with the Caristo Construction Corporation (574-575A). Examination of the books and records of the Caristo Construction Corporation indicated that Theiss was the recipient of \$128 worth of whiskey on April 14, 1958, a time when he was in charge of construction at the school in question (894-5).

7. *Edward Buckley, Superintendent of Construction*

An analysis of Buckley's finances by Commission accountants revealed that his expenses for a given period of time exceeded his known sources of income. Following a number of conferences with Commission accountants, Buckley reluctantly acknowledged that he had outside sources of funds. The first of such sources was verified. Buckley had performed services for one of the architects doing business with the Board of Education. Buckley's original conceal-

ment of these funds was not accidental. Such service is prohibited by Section 886 of the City Charter (Conflict of Interest). Further, he failed to report these receipts in his taxable income (Pr. H. 3667).

The second source of additional monies was alleged to be gifts from relatives (Pr. H. 3666-67). On his questionnaire, Buckley swore that he had received no gifts in excess of \$100 from relatives and in the original conferences with Commission accountants, he swore that he had not received any gifts from relatives (Pr. H. 8588-91). However, when he later found it necessary to "balance" his income and outgo, he stated that he had received cash gifts from relatives in an amount which was coincidentally equal to the amount of money required to balance his account (Pr. H. 8588-97).

At a private hearing Benjamin Konstantin, General Manager for William J. Scully Acoustics, testified that Buckley had demanded approximately eight boxes of tile for his own personal use. Konstantin testified that Buckley was persistent in his efforts to secure such tile, and that he followed Konstantin from job to job (Pr. H. 4141-46). Konstantin further testified as follows:

"... He has sort of a nickname, 'Gimme' Buckley, or 'Handout' Buckley, or anything the fellow can think of—something more vulgar than that." (Pr. H. 4147).

8. Harry K. Roberts, Superintendent of Construction

When originally questioned Mr. Roberts denied receipt of gifts from contractors. He claimed that he purchased a television set for \$300 with money accumulated in a "tin box" in his home. Later he acknowledged his original concealment and admitted acceptance of a television set given by a subcontractor whose work he had been supervising for the Board of Education.

9. William Kocarnik, Superintendent of Construction

An analysis of Mr. Kocarnik's finances revealed a serious imbalance between income and outgo in the approximate amount of \$4,900 for the years examined.

In an affidavit submitted to this Commission on April 3rd, 1961,* Mr. Kocarnik stated:**

"I William Kocarnik wish to state at this time that when I subbmited the financial Questionnaire dated Nov 2nd 1960 I

* Introduced at public hearing as Commission's Exhibit 57.

** The affidavit was prepared by Mr. Kocarnik and is reproduced as submitted by him.

omitted certain incomes received by me in addition to my salary from the B of E.

"The below listed items was earned or borrowed by me as noted

"In the year 1957 and 1958 I earned by writting a TV Story for NBC in 1957. the story Named (Incorrigible) for Which I received the sum five hundred dollars

"In the year 1958 I wrote a story for CBS the story (Lifes Whirlpool) for which I received the sum of seven hundred dollars, My Contacts were made for me by a Mr. Lester Berwick a friend who was advertising Manager for United Tabbaco Co. at that time he handled this for Me. I wrote above stories under the pen name of Richard Dawson and was paid by check the Sum of \$500.00 by NBC check and the sum of \$700.00 by check By CBS and received this check from Mr. Lester Berwick who gave me then to me to be used for home repairs in the year's 1955 up to 1959 I to my best recollection and knowledge that the checks were cashed by dealers or contractors who had done work on my premises.

"Also I state the only names I have ever used for any purpose were William Kocarnik or pen name Richard Dawson.

"I have never received or accepted or solicited any tips gratuities favors. or things of value from any individual in connection with the performance of my duties with the Board of Education

"The informatiion in this statement 3 pages has been furnish voluntarily so that the source of the Twelve hundred dollars could be explained

"Signed 4/3/6

/s/ William Kocarnik

"Sworn to before me
this 3rd day of April, 1961
Notary Public"

A check with the networks which had allegedly purchased these scripts failed to substantiate Mr. Kocarnik's explanation (737-38).

D. Double Standards for Contractors

One of the most sinister conditions in the Bureau of Construction was the existence of a double standard for contractors. Such a standard must eventually reduce competition among contractors, and by so doing the City becomes more and more dependent upon the

small group which remains. Securing evidence for something as intangible as a double standard is exceedingly difficult, for few, if any contractors still doing business with the Board of Education could be expected to come forth and either acknowledge favoritism or complain about discrimination. The favored contractor has a great deal to lose, while the disfavored contractor fears even worse discrimination. However, the Commission was fortunate to obtain the cooperation of Mr. Martin Singer, one of the principals of Mars Associates; Mr. Singer was able to document many of his allegations.* Testimony from this contractor was particularly important, for prior to its disqualification over the tie bid at P.S. 203, Queens,** it was the second largest public school builder in New York City.

In 1957, Mr. William Correale, Director of the Bureau of Construction, informed Mars that its low bid on P.S. 3, Richmond, was being rejected, even though it had prequalified, i.e., passed the very tests designed to eliminate unfit or undesirable contractors (948). No reasons were assigned therefor, but after much discussion, Correale agreed to honor the low bid by Mars if it entered into a "gentlemen's agreement" to refrain from bidding for approximately two or three months (954). Correale allegedly wanted Mars to have an opportunity to "catch up" on its work, even though there was no showing of delay. Mars reluctantly acceded to Correale's terms, and at the conclusion of the suggested period it again entered into competitive bidding.

Once again, in June of 1958, Correale rejected a low bid of Mars—this on P.S. 51, Richmond, despite the fact that Mars had already prequalified. On June 4, 1958, Mars was notified by the Administrator of Business Affairs of the Board of Education that Correale had recommended to the Board of Education that the general construction award at P.S. 51, Richmond, be made to the second lowest bidder, the Caristo Construction Corporation (961-62). An opportunity was provided Mars to appear at a hearing before the Board of Education less than 48 hours later. A request for a postponement of the hearing was denied, as was a request for stenographic minutes during the course of the hearing (963-64). After a number of hearing days, during which statements were heard from many Board of Education personnel, several high officials of the Board of Education

* Documentation of discrimination is almost as difficult as securing voluntary testimony in the first instance.

** See pp. 175-180 *infra* for details of this matter.

intervened and instructed Correale to withdraw his objections; Mars was permitted to receive the award (974).

When Weiss assumed office, Mars hoped that this would mark a new era in its relationship with the Board of Education. Although Weiss personally promised Singer a "fair shake" after assuming office (978), Weiss favored Caristo in the tie bid at P.S. 203, Queens. Although this matter is fully discussed later it should be reported here that when Weiss announced his choice of Caristo he did so with full knowledge that he did not have the power to resolve tie bids. Such knowledge had been conveyed to Weiss by the members of the Board of Education at an Executive Session held less than three weeks earlier (1225-26).

In May 1960, Mars prequalified to bid on a package of three schools, P.S. 183, Queens, P.S. 232, Queens, P.S. 288, Brooklyn; in June 1960 it was the low bidder on this package by some \$63,000 (975). Second was the Caristo Construction Corporation. Again, despite the fact that Mars had prequalified, Weiss did not immediately award the work to Mars. He requested that the corporation submit another financial qualification statement (976-77). Such procedure is irregular since the corporation had already prequalified just a few weeks earlier. The second statement submitted at Weiss' request was the same as the first, which had already been approved. Faced with the prospect of a major struggle, Weiss capitulated and made the award to Mars (979).

Following this incident, Weiss refused to award two other contracts to Mars when it was the low bidder by \$150,000 on P.S. 83, Manhattan, (983) and by \$38,000 on P.S. 74, Manhattan (987). The reason assigned by Weiss was that the bids were far in excess of the costs of the schools as estimated by the engineering firm hired by the private architects (983-987). In both instances, the architects later acknowledged very substantial errors on their part. (984). In the first instance, P.S. 83, Manhattan, the estimator for the architect acknowledged his error in the amount of \$500,000.*

In the second instance, P.S. 74, Manhattan, the architect admitted that he omitted \$300,000 worth of work in his estimate (992). Weiss promised that if the architect would acknowledge the error in letter form, the award would be made to Mars. Weiss failed to do so despite fulfillment of his own condition (993-94).

* There is an indication that Weiss knew of the error when he forced re-bidding on this school (986). Mars would never have consented to re-bidding the contract if it had known the error was acknowledged (986-87).

An isolated instance, but a very important example of how favoritism and discrimination can be of critical importance arose in 1959. For many years the Board of Education specifications had fostered what are described as "monopoly specifications" in the matter of school windows. These specifications were so worded that only the windows manufactured by the S. H. Pomeroy Company could meet the standard (996). Jules Haut testified how he "broke" these monopoly specifications after assuming office (Pr. H. 14260-61). The Preusse Report also criticized monopoly specifications. There is a very significant difference in cost between the Pomeroy windows and other windows which have been used and found acceptable on other City, State and Federal buildings for many years. If a contractor could bid a school knowing that he would be permitted to substitute a less expensive (but still satisfactory) window, it would place him at a distinct competitive advantage. The difference in cost to Mars, as bid to it by Pomeroy and a competing window manufacturer, was approximately \$50,000 per elementary school (998). Note that this sum alone is larger than the dollar spread between the first and second bidders on almost all elementary schools.

On P.S. 51, Richmond, Mars requested permission to substitute the very window which Caristo had recently been permitted to use as substitutes on two of its schools. Although Caristo's request was favorably received, Correale rejected Mars' request (998). Singer testified that in preparing his bid for P.S. 51, Richmond, he had based it on the less expensive window in view of the permitted Caristo substitution under identical circumstances at P.S. 79, Brooklyn and P.S. 286, Brooklyn (997). The failure to approve the substitution meant that the window work cost Mars \$50,000 more than it had planned in its bid. To Caristo the grant of permission to make the substitution constituted a most significant saving, and an opportunity for possible future bidding advantage.

E. Miscellaneous Violations of Law and Improper Practices

1. Although not presented at the public hearing because of time limitations, there is ample private hearing testimony which indicates that to the cost of each and every school must be added many thousands of dollars to cover certain improper cash expenses of contractors. Apparently, it is not uncommon for prime contractors and subcontractors to pay substantial sums to employees of the general contractor, so that "accidents" will not occur (Pr. H. 9620-22; 9624-26).

In blunt terms, contractors are forced to pay cash to already highly paid men so that they and their workers will not perform acts of sabotage.

2. Another very substantial additional cost is incurred in the following manner: the temporary elevator, or lift, as it is called, is maintained by the general contractor for the exclusive use of his personnel. Obviously, other contractors have occasion to use this lift. To do so, they must make cash payments to the lift operator. \$25 to such operator appears standard for fifteen to twenty minutes of his time. If an entire hour is used the lift operator receives \$25 to \$40 (Pr. H. 10,321). One prime contractor told a Commission representative that he alone paid an average of \$150 a week in cash for about 30 weeks during the construction of an elementary school, an average of about \$4,500 per school. Another estimated that payments totalled about \$2,600 per school (Pr. H. 10,322-2).

3. Crane operators in the employ of the general contractor are also recipients of cash payments from contractors other than the general contractor who hires the crane. Here there is no specific showing of additional cost to the other contractors, for they would probably have to rent a crane of their own if they couldn't use that of the general contractor. The range of payments to a crane operator for single operation is between \$50 and \$200 (Pr. H. 10,320). This money is kept by the crane operator and is not turned over to his employer.

Perhaps most significant about the payments described above is that they point up an area of improper cash flow in the construction field, cash payments which are traditionally disguised or otherwise identified on contractors' books, and which are not reported as income by the recipient.

F. Payments by Contractors to Custodians*

It was ascertained at the private hearings that there had long been a suspicion of financial payments by contractors to custodians, but that nothing had ever been done by the Board of Education until the Commission made inquiry into the subject** (Pr. H. 14,256). This Commission uncovered the following very prevalent practice: although it is the obligation of the contractor to clean up at the conclusion of construction, frequently contractors paid school

* See pp. 24-5 *supra* for general description of custodians' duties and functions.

** Deputy Superintendent of Schools, Joseph R. Weiss, on January 25, 1961 directed the attention of all custodians to regulations prohibiting acceptance of clean-up fees.

custodians to do so.* The practice may seem harmless enough, but there are several important considerations which lead to a contrary conclusion.

First, the custodians who are under the direction of the Deputy Superintendent of School Buildings (formerly under the direction of the Bureau of Plant Operation and Maintenance) are provided a detailed manual of rules and regulations, entitled, "The Rules and Regulations For The Custodial Force In The Public Schools Of The City of New York." Contained therein is the following prohibition against acceptance of clean-up fees from contractors:

"Cleaning up after contractor; Disposal of Salvage: Neither the custodian nor his employees shall accept employment to clean up debris after outside contract work."

[§7.1.10 issued July 23, 1953 at p. 2451]

Certainly the custodians can be held to knowledge of these regulations, a copy of which is given to each of them.** These regulations are separate and apart from the conflict of interest sections of the City Charter.

Second, what should have made the custodians alert to the issue is the fact that up to very recently, custodians were charged with the responsibility for preparation of the four and ten month punch lists. In other words, to a large degree it was their obligation to protect the rights of the City in school construction as it related to defects which appeared during the one year warranty period. The objection to a financial relationship between the contractor and the man entrusted with the task of critical evaluation of the contractor's work requires no elaboration. This was obvious to many custodians, but not to a number of others. Some custodians refused monies from contractors because they did not wish to be "obligated." It is sad to report that most High School custodians, who generally attain such positions only after many years of service, did not object to such payments.

It is not suggested that any particular custodian failed to properly discharge his punch list obligations. On the other hand, the policy

* In elementary schools custodians usually received about \$300 from the general contractor. The corresponding "fees" for Junior High Schools and High Schools were between \$400 and \$600. There was room for "negotiation" and the bargaining process was frequently indulged.

** It would appear from examination of the activities of school custodians together with all other pertinent information that they are employees of the City, not independent contractors. It is interesting to note that high Board of Education officials so regard them and that most custodians so regard themselves.

which underlies the prohibition of such financial relationships seeks to avoid temptation and the opportunity for wrongdoing.

One custodian first testified that the contractor cleaned up himself, and was quite outspoken in listing the reasons why a custodian should refuse any offer of clean-up fees:

“Q. There was no discussion for you to undertake the cleaning up of the school?

A. No. I wouldn’t do it anyway.

Q. Why not?

A. It’s not good to do that stuff. In the first place, you have not got the manpower. Then I would be hung with a punch list.

Q. In other words, you would feel obligated to the contractor?

A. Naturally. If you say you are going to clean up, you have to clean up defects and everything. I was too wise for that. I opened other schools (Pr. H. 5164).

* * *

Q. Do you know of any regulations in your rules and regulations [prohibiting the acceptance of clean-up fees]?

A. Definitely. We are not supposed to accept any money.

Q. Are other custodians aware of that?

A. I don’t know. If they read the rules and regulations they should be.” (Pr. H. 5166).

This same custodian when later examined and then confronted with a check from a general contractor, admitted he had accepted clean-up fees of \$350 from the general contractor and \$100 from the Heating and Ventilating contractor (Pr. H. 7012; 7018).

By virtue of time limitations, the Commission’s emphasis was confined to clean-up fees paid to custodians by general contractors. As for other prime contractors and subcontractors, the Commission made no specific effort to determine the magnitude or extent of these fees. However, in the course of the investigation, the Commission did determine that the practice was widespread, at least on the prime contractor level. One of the largest of these prime contractors testified that most custodians accepted clean-up fees from him (Pr. H. 9649).

It is important to note that contractors rarely made payment to the custodian by check. Cash was the usual method of payment,

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and contractors' books overwhelmingly failed to identify the payment properly. When payment was made to a custodian for clean-up, contractors would usually charge it to "Miscellaneous Job Expense"; when payment was made to someone other than a custodian for clean-up they would usually charge "clean-up."

G. Joseph R. Weiss, Deputy Superintendent of Schools

As previously indicated, on September 1, 1959 Joseph R. Weiss was given the powers previously held by three different individuals, former Associate Superintendent of Schools, David F. Moskowitz, the former Superintendent of the Bureau of Plant Operation and Maintenance, Diedrich F. Lehnert, and the former Director of School Buildings, Design and Construction, William H. Correale. Such joinder of authority was recommended by the City Administrator, Charles F. Preusse, in his report issued in February, 1959.*

It is generally agreed that a program or department is rarely better than its leader. In seeking to comprehend the serious problems uncovered in this investigation, the Commission naturally turned its attention to the head of this vast program, a man whose authority in new school construction and maintenance was probably exceeded by few if any other people in this country. The proper discharge of such obligations requires a variety of skills and qualifications. Foremost among these are outstanding professional and administrative talents** and personal integrity. Further under the conditions prevailing at the time when Mr. Weiss assumed office, high moral standards of leadership were also of paramount importance.

The facts which follow concerning Mr. Weiss' personal integrity (only as it relates to his positions with the Board of Education of the City of New York and the Board of Higher Education) and his administrative ability speak for themselves. They relate to the propriety of his retention in office.***

Ineffective Administration:

Mr. Weiss testified that he devoted most of his time securing approval for new schools. Similar attention was not focused on execution of plans, however, and at the public hearing he had no idea

* Preusse Report p. 27.

** Preusse Report p. 25.

*** Mr. Weiss was tried departmentally before Special Trial Examiner Theodore Kiendl, who found Mr. Weiss guilty on 16 of 18 specifications (one specification was withdrawn by the corporation counsel). Mr. Kiendl recommended Mr. Weiss' discharge on a number of separate grounds. His report is more fully discussed on pp. 191-193 *infra*.

of how many schools had actually been completed in his twenty-two months in office (1320).

Along with the responsibility for new school construction the Deputy Superintendent of Schools is responsible for the maintenance of the existing physical plant. On the eve of the Commission's public hearing, school principals received special forms from the Board of Education. They were instructed to list all construction and mechanical defects in their schools, directing special attention to emergency defects. Replies were received from 845 of the 860 principals, and each of these placed items in the emergency category. A very substantial number of the emergency conditions had existed for years. From this record it is apparent that the tremendous backlog of maintenance needs was ignored by Mr. Weiss since he assumed office. By his own acknowledgement, he concentrated on new school construction, and attention was focused on maintenance only about one month before the public hearing. At the public hearing, Commissioner Lane inquired of Mr. Weiss:

"Mr. Weiss, it is fair to say that speed-up of the maintenance program was in good part a result of the State Investigation?"

Mr. Weiss replied:

"No question about it." (1320).

Mr. Weiss' own background as a city and state employee demonstrates clearly that the rules and regulations promulgated for employees were of no concern to him.

1. Violation of Multiple Job Regulations of Board of Higher Education

With the exception of wartime military service between 1942 and 1945, Weiss had been an employee of the Board of Higher Education in a variety of teaching titles from 1936 to 1958. As such an employee he was subject to the Multiple Job Regulations paragraph VI (g) of the Board of Higher Education.

"No person rendering full-time service in any of the colleges under the administrative control of the Board of Higher Education shall engage in any other business or profession while in the service of the college, unless such business or professional service shall have been approved by the President of the college in which such persons receive such annual salary. Such additional service shall not be permitted, if in the judg-

ment of the President of the college, such service may interfere with the proper performance of the duties for which annual compensation is provided." (1242).

Never during his service with the Board of Higher Education did Mr. Weiss ask or receive permission to engage in outside engineering practice (Pr. H. 13, 198-99), although he always maintained a private engineering practice (1243). He testified that these regulations were never brought to his attention (1242). It is difficult to believe that one could be affiliated with the college system for a period in excess of 22 years and never learn of such a prohibition. The primary purpose of such a prohibition is quite obvious—it seeks to ensure that teaching personnel will not devote an inordinately large part of their time to outside work. To ensure the establishment of uniform standards, written permission by each college president is required. Although each college president is free to fix his own standards, a rule of thumb which has emerged over the years is to allow full-time personnel up to one day each week for private pursuits (Pr. H. 6640).

By Mr. Weiss' own estimate, he devoted only two or two and a half days a week to his full-time position with the Board of Higher Education (Pr. H. 13,204). It should be noted that during the years immediately preceding Weiss' promotion he was assigned to the Architectural and Engineering Unit of the Board of Higher Education. In charge of this unit was Mr. Arthur Schiller, who testified that at no time did Mr. Weiss ever report to him or give any indication as to the time he was devoting to the work of the Board of Higher Education (Pr. H. 8121-22).

When Mr. Weiss' promotion to full professor was proposed, his outside practice was one of several major points of objection; when his promotion was in fact approved, a special resolution was passed by the Board of Higher Education as follows on June 16, 1958:

"Resolutions Recommended by the Special Committee on the Promotion of Associate Professor Weiss

RESOLVED, That the report of the Special Committee, dated May 16, 1958, with respect to the promotion of Associate Professor Joseph R. Weiss be received and approved, and be it further

RESOLVED, That the transfer of Associate Professor Joseph R. Weiss from the Architectural and Engineering Unit of the Board of Higher Education to the Office of the Dean of Ad-

ministration, Hunter College, and his promotion from the rank of associate professor to professor of engineering, at a salary rate of \$10,150 per annum, subject to financial ability, be approved, effective upon the date of his return from his current leave to continuous full-time service with the Board of Higher Education, and be it further

RESOLVED, That the president of Hunter College be requested to report to the board such action as he may take with respect to the committee's recommendation that the scope of Professor Weiss' duties be clearly defined and that his hours of service be made roughly comparable to those of members of the instructional staff relieved from teaching duty, enjoying similar rank and status."

Despite all this, Mr. Weiss testified on June 6, 1961 that he had not known of the restrictions on outside employment and that Judge Simon H. Rifkind, who headed a special three-man committee to pass on Weiss' promotion, never discussed the matter when he appeared before him (Pr. H. 13,208). Weiss further testified that he had never been advised of this special resolution pertaining to his promotion. This is difficult to believe, particularly in view of the fact the committee headed by Judge Rifkind was specifically directed to explore and report on the subject of Weiss' extra-curricular activities, and the promotion resolution contained a one-of-a-kind caveat pertaining to Weiss' outside activities.

Mr. Weiss' violation of the Multiple-Job Regulations, together with other serious questions which were raised, seemed to make his promotion most unlikely. However, it was asserted that Weiss' promotion resulted from political pressure exerted on his behalf by his friend John J. Theobald, then Deputy Mayor.*

Mrs. Ruth S. Shoup, Secretary of the Board of Higher Education for over 20 years, directed her attention to political pressure by Dr. Theobald in a sharply worded dissent to Mr. Weiss' promotion:

* * *

"3. In light of the statements of Presidents Gallagher and Gideonse at the Board meeting of April 21, as to the circumstances of the original request for Professor Weiss' promotion, the belief that political pressure was exerted in his behalf can-

* Dr. Theobald has persisted in describing Weiss' work as "superb" even in the face of overwhelming evidence to the contrary. The long-standing personal friendship between Dr. Theobald and Mr. Weiss may provide the explanation for Dr. Theobald's unqualified support of Weiss.

not be dismissed. Dr. Shuster's motives in asking for Weiss' transfer to Hunter have never been questioned. He undoubtedly saw a chance to acquire valuable services for Hunter's building program and seized the opportunity with the joy of a fond father trapping game for a hungry family. But the fact remains that the original request for promotion came in forceful form from the Deputy Mayor, who is certainly capable of exerting political pressure. It was made the condition for the underpaid and overworked Architectural Unit to receive increases and reclassification that had long been worked for.

"Although Dr. Theobald's remarks should not bar the candidate's promotion if it has been earned in every other way, even closer scrutiny than usual should be given to his qualifications under such circumstances, and his record must be unimpeachable."*

* * *

Dr. Gideonse, President of Brooklyn College, also a member of the Administrative Counsel which passed on Weiss' promotion, recalled hearing such general statement attributed to Dr. Theobald. (Pr. H. 6656-57). Dr. Gallagher, former President of City College, also then a member of the Administrative Counsel, had no personal recollection of such incident (Pr. H. 7490; 7524-26). Dr. Theobald vigorously denied it (Pr. H. 11,454).

2. *Absence without Leave from Post with Board of Higher Education*

During the period January 1, 1958 through June 30, 1958, Mr. Weiss was on a full-time salary basis with the Board of Higher Education, attached to the Architectural and Engineering Unit under the direction of Mr. Schiller. From March 12, 1958 through April 23, 1959, Mr. Weiss left his post in the United States to work in the Far East for the private engineering firm of Scharf and Leaburger. At the private hearings, Mr. Weiss admitted that he had not notified anybody in the Board of Higher Education that he was leaving the country or taking a leave of absence (Pr. H. 12,592). Nothing in the Board of Higher Education files indicates that any notice was given by Weiss until after his return. This notice was in the form of a letter requesting permission to leave. Although it is dated March 7, 1958, the post mark is May 5, 1958 that is, almost two months after his return. Indeed, he could offer no explanation

* Letter under date of June 2, 1958 from Mrs. Shoup to Judge Rifkind.

concerning this unusual conduct in mailing a letter with instructions to communicate with him in Viet Nam, a country he had already left (Pr. H. 12,592-94).

At the public hearing, Mr. Weiss claimed for the first time that he had called someone in the Board of Higher Education about his intention to leave (1260), a deviation from his sworn testimony at private hearings.* However, the records of the Board of Higher Education indicate that no person of authority knew that Weiss was leaving the country. Highly significant is the fact that his payroll checks from the Board of Higher Education for that period were made out to him as though he had never left.** Interestingly enough, it is quite possible that Mr. Weiss' departure would never have been noted had not his appearance been required by the Board of Higher Education in connection with his promotion difficulties previously discussed.

A single instance of lack of a sense of responsibility to one's superior may not indicate unfitness to be a leader. Unfortunately, in the case of Joseph R. Weiss, the pattern of disregard and violation of rules and regulations was to be repeated all too often when he became the Deputy Superintendent of Schools. These matters will be dealt with in the sections immediately following.

3. *Evidence of Disregard of Administrative Obligations after September 1, 1959*

(a) Failure to establish policy regarding outside employment and acceptance of gratuities.

i) Joseph Kalb, former Chief of Civil Engineering Unit, Bureau of Construction

The subject of Joseph Kalb's dual employment by the Board of Education and a Board of Education contractor has been discussed in detail at pp. 135-9 *supra*, and will not be repeated at this point. Suffice it to say that Weiss' actions herein constituted a complete disregard of instructions and dereliction of duty in an area clearly fraught with major problems.

ii) Outside Employment

This subject has been covered in substantial detail at pp. 134-143 *supra*, and also need not be reiterated at this time. However, a final

* At private hearings Mr. Weiss testified that he had notified nobody (Pr. H. 12,592).

** He was not entitled to retain any pay for this period when he was absent without leave, and was required to return such remuneration.

observation appears appropriate in this connection. It was made by Commissioner Jacob Grumet during the interrogation of Mr. Weiss at the Commission's public hearing. Commissioner Grumet suggested that the reason Weiss was so lax in establishing any standards with respect to these two important subjects was that he himself had no desire to comply with proper standards which necessarily would have been promulgated (1287). For instance, Weiss continued his outside engineering practice after he assumed position of Deputy Superintendent of Schools.* Although Weiss testified that he so advised Dr. Theobald, the latter, at a private hearing held on May 10, 1961, denied any knowledge of this outside practice, and stated that he would order it stopped immediately. (Pr. H. 11,461). This may also account for Weiss' velvet glove disposition of the Kalb matter in apparent disregard of instructions.

iii) *Acceptance of Gratuities*

The private and public hearings were replete with evidence of the most widespread gift-giving by contractors to Board employees. Weiss himself accepted a case of Scotch whiskey from one of the largest contractors doing business with the Board of Education in the school construction program (1281-83). No one suggests that such a gift was given with the intention of influencing Weiss' discretion, or that it ever had such an effect. However, as previously indicated, the standards set by the head of an organization often become known to his subordinates, and set the tone for their own actions. Mr. Weiss testified at a private hearing that in his opinion the acceptance of a gift certificate in an amount in excess of \$25 by one of his employees would be a very serious matter. Weiss' superior, Dr. Theobald, testified that he would not, in terms of disciplinary action, distinguish between a gift certificate and whiskey where both were the subject of Christmas gifts (Pr. H. 13,920). By these standards, then, Mr. Weiss' acceptance of a case of whiskey worth approximately \$75 is just as culpable as the acceptance of a gift certificate in that amount by one of his employees.

(a) Director of Architecture Michael Radoslovich

Mr. Radoslovich sought the advice of his superior, Deputy Superintendent Weiss about the following matter. Mr. Simon Kaplan, owner of the Wilaka Construction Corporation, a contractor doing work for the Board of Education, asked Mr. Radoslovich to design a

* He testified that he engaged in such work only where necessary to honor previously outstanding commitments.

home. Mr. Radoslovich is a well known architect who possesses the highest qualifications. Although nothing in his work brings him in contact with general contractors, he was apprehensive about accepting this assignment without approval from his superiors. Radoslovich spoke to Weiss several times about this and each time Weiss told him, "By all means, go ahead and do it." (94). At the public hearing, Mr. Weiss did not have any recollection of his discussion, but did not deny same (1289).^{*} For this, Mr. Radoslovich is being tried departmentally. Here then is the sad spectacle of a Deputy Superintendent of Schools counseling conduct which proved to be chargeable as a violation of the City Charter.

Still another example of Weiss' inability to work within the framework of rules and regulations occurred when Weiss asked Radoslovich to resign. When Radoslovich refused, Weiss promised him a substantial amount of business, both in the form of awards of contracts to design schools for the Board of Education and work to be performed for private individuals with whom Mr. Weiss had influence (89-90). Mr. Radoslovich did not succumb to these blandishments, and on September 25, 1960 was punished by being transferred, without staff, to 110 Livingston Street, where he has worked at the corner of a conference table in someone else's office.^{**} All of the people under his jurisdiction remained at Crescent Street, Long Island City, where the Bureau of Construction has traditionally been located and which office all of its employees use as a base of operations.

The promise by Weiss to Radoslovich of future school work is particularly interesting in view of the fact that at the time it was made there was being prepared a system of objective evaluation of architects, designed to make impossible the very treatment which Weiss was promising Radoslovich.

iv) *Selection of Architects for School Work*

(a) Paul Williams

For a number of years a prerequisite to receipt of an architectural contract from the City of New York has been inclusion on what is known as the Mayor's List of Qualified Architects. This is a type of

^{*} Radoslovich made other futile efforts in an attempt to determine whether he could legally accept this commission, and checked with the Confidential Secretary to former Board of Education member Francis Adams, and also with the Office of the Law Secretary of the Board of Education. In neither of these places was he provided a definite answer (95-96).

^{**} This is not to say that Mr. Radoslovich is not rendering valuable services to the Board of Education. However, the fact remains that although he is still titled the Director of Architecture he does not discharge these duties.

prequalification for architects, and is designed to assure that only the most qualified will be awarded city work. In 1959 Weiss chose an architect who was not a member of this panel to design one of the local schools. The architect chosen was Paul Williams of Los Angeles, California. Mr. Williams is an architect of high repute and skill, and this Commission in no way intends to disparage his extremely high professional standing. However, the fact remains that he was not on the Mayor's List of Qualified Architects at the time Weiss chose him. Weiss acknowledged that he both knew of the requirement of listing and that Mr. Williams was not on such list (1292); yet he felt free to disregard this requirement. The establishment of such a list has many advantages, not the least of which is the fact that throughout this country there are vast differences in local building codes, and it would be too much to expect that an architect licensed in California would be familiar with the requirements in New York City. The purpose to be served by such prequalification was vividly demonstrated in this instance, because there were substantial delays in the construction of this school designed by Williams, in part because the plans as originally submitted did not conform to the New York City Building Code (Pr. H. 7217-19; 7221-23; 3802).

(b) Selection of Architects by Weiss

Weiss' predecessor was not in the habit of generally consulting with his staff prior to recommending names of architects to the Board of Education. He did, however, follow the Board practice of submitting approximately three names for each proposed school. Weiss did not follow this practice of proposing multiple choices, although he was specifically directed to do so by the Board of Education on at least one occasion (Pr. H. 13,265). Weiss submitted one name and one name only. By so doing the Board was deprived of any real choice in the selection of architects. Here then is another example of Weiss' inability to work within the framework of rules, regulations, and procedures of a system. Even when directed to do so by one of his superiors he persisted in doing things as he saw fit.

Mr. Weiss' record does not stop at this point—it goes further, and ranges from acts which might be considered conduct unbecoming an employee to perjury.

v) *Mr. Weiss Gives False Assurance to his Superior at the Board of Higher Education.*

In the early 1950's Weiss was an employee of the Board of Higher Education, holding the rank of Assistant Professor of Engineering.

During this period, he in fact acted as a consulting engineer for the Board of Higher Education. In a resume which Mr. Weiss prepared for the Board of Higher Education on February 4, 1958 in connection with his proposed promotion to full Professor, he stated that he had performed consulting and special engineering services for the President of the College of the City of New York between 1948 and 1958. One of the services specifically referred to was the supervision of the conversion from DC to AC current at the college.

The engineering work described in this resume was performed by the engineering firm of Byrnes Associates. Mr. Weiss was in the employ of Byrnes Associates or one of their wholly owned companies from 1952 through 1958. In other words, at the very time that Weiss was supervising the adequacy of the work being done by Byrnes Associates for the State of New York, Byrnes Associates was paying Weiss between \$500 and \$1,000 per month. The matter came to the attention of Weiss' superiors in the Board of Higher Education early in 1955, after the practice had continued for a number of years. At such time the matter appeared to be concluded with a written assurance by Weiss that although he did not agree that the services he rendered for Byrnes Associates constituted a conflict of interest, he would cease and desist from any further work:

"JOSEPH R. WEISS

Consulting Engineer

250 East 43rd Street

New York 17, New York

March 11, 1955

"Mr. Arthur Schiller, Director
Architectural & Engineering Unit
Board of Higher Education
140th Street and St. Nicholas Terrace
New York 31, N. Y.

Dear Mr. Schiller:

"The Law Assistant of the Board of Higher Education, in a communication dated February 11, 1955 has answered Dr. Buell G. Gallagher's letter of February 7, 1955 concerning the propriety of awarding a contract to Wm. H. Byrne because I have been and am currently doing consulting engineering work for Byrne Associates, Inc. outside of the City of New York on matters not in conflict with the interests of the City of New York.

"The Law Assistant has quoted sections of the law that are not applicable to my case and that were never intended to be applicable. I have this on the authority of my attorney and on the basis of informal discussions with the Corporation Counsel in charge of the educational section.

"Notwithstanding, in order to dispose of any possible implication that the consulting engineering work I do with Byrne Associates, Inc. may be construed as having any bearing whatsoever upon any contract they have with the City of New York, and in order to avoid any possible question in the matter, this is to inform you that I will sever my connection with Byrne Associates, Inc. as of April 1, 1955. By that time I expect to conclude those matters which I am handling for Byrne Associates and which have never had any connection with the services that firm renders to the City of New York.

"Very truly yours
/a/ JOSEPH R. WEISS*

JFW:W"

Weiss did not keep his word, and in fact continued to work for the same firm or related firms for some three more years, during which time he received approximately \$29,100 more as an engineering consultant (1254). At the public hearing Weiss was asked:

"Q. Did you, in fact, Mr. Weiss, observe the promise that you made in this letter?

A. I don't remember that at all, Mr. Okun." (1246).

vi) *Violation of City Code of Ethics*

New York City Charter §886 (1) provides:

"No councilman or other officer or employee or person whose salary is payable in whole or in part from the city treasury shall be or become interested directly or indirectly in any manner whatsoever, except by operation of law, or act as attorney, agent, broker or employee for or accept any gift, loan or thing or promise of value from any person, firm or corporation interested directly or indirectly in any manner whatsoever, in or in the performance of or in any litigation arising out of or involving any contract, work or business or the sale or acquisition of any property, the expense, price or consideration of which is payable from the city treasury or by any assessment

* This letter was introduced at the public hearing as Commission's Exhibit 72.

levied pursuant to law; or in the purchase, lease, rental or letting of, or grant of license or permit in relation to, any real or other property belonging to or taken by the city, or which shall be sold for taxes or assessments, or by virtue of legal process or any provision of law by or at the suit of the city."

* * *

By the early part of 1956 the Bureau of Construction found itself faced with what appeared to be a hopeless backlog of unresolved change orders. Although the then head of the Change Order Division, Mr. Vincent Iarrobino, had long requested several additional personnel in order to cope with this backlog, his request had always been denied on budgetary grounds. Despite an alleged shortage of twenty to thirty thousand dollars a year for such additional personnel, the Board of Education in the next 30 months was to spend over \$300,000 on outside consultants in order to help with this backlog. The services of Joseph R. Weiss were deemed important in this connection and he was hired for a number of six month contracts to assist with the resolution of these change orders. His recompense for this work was to be at the rate of \$175 for a seven hour day. While this rate might not seem excessive for per diem engineering services, it is an exceedingly high rate considering the substantial length of time for which it was envisioned. The original estimate of the Board of Education was for a maximum of six months. In fact, the work extended for nearly three years. Weiss received a total of \$58,812.50 as such consultant. He was not expected or required to render any specific engineering services. In his own words, his function was to bring together the contractors and the representatives of the Board of Education. The actual computation of the value of the change orders was performed by the engineering firm of Tippetts, Abbott, McCarthy and Stratton, hereinafter referred to as T.A.M.S.*

Weiss, by his own admission, exerted his influence to secure for T.A.M.S. the award which it received from the Board of Education (Pr. H. 651). At the public hearings, Weiss at first denied this but

* The regular staff of the Board of Education continued to work on change orders all during the period. While on the subject of Weiss' resumé and work rendered it should be noted that he took complete credit for the change order work and conveniently omitted any reference to the assistance by T.A.M.S. Weiss resumé, dated February 4, 1958. "*Board of Education of the City of New York. Determination of validity and magnitude of approximately 5,000 change orders on construction of new schools and alterations to existing schools. This engagement resulted in a saving to the City of New York of \$250,000, between claim and amounts actually paid out. During 1957, this engagement was renewed until 1958 with another group of 5,000 change orders (1956-1957).*"

when confronted with his own private hearing testimony, he stated that he had no present recollection (1258). The testimony of Mr. Walter Prokosch, partner in the engineering firm of T.A.M.S., confirms Weiss' initial testimony (Pr. H. 14,197). In fact it was Weiss who called T.A.M.S. and asked if they would be interested in submitting a proposal for the work (1135). T.A.M.S.' first contract with the Board of Education started in October 1956; the second in July 1957; and the third in May 1958. All were for six month periods.

In May 1957 Weiss entered into a financial agreement with T.A.M.S. on the following basis: Weiss would be on call up to three days a month on a consultant basis, in return for which he would be paid the sum of \$525 a month. Weiss was in fact paid this sum for each and every month from June 1, 1957 through April 30, 1958 and received a total of \$5,775 therefrom.

The T.A.M.S. files indicate only one reference to any work done by Weiss during this period. In June 1957 he was forwarded certain plans for the Pan-American Building at Idlewild Airport. On July 1, 1957 Weiss turned these plans to T.A.M.S. with several comments. There is no indication that Weiss was called upon to perform any other services. According to Weiss' testimony, he played a major role in design of the air curtain for the Pan-American Building, but the record clearly indicates that this work was not done by Weiss (Pr. H. 14,219-220).

vii) *A Former Associate Receives Board of Education Work from Mr. Weiss.*

One of the partners in the engineering firm of Scharf and Leerburger, 300 East 46th Street, New York, New York is Franklin Leerburger, a college classmate of Joseph R. Weiss. For a number of years, Mr. Weiss shared office space with this engineering firm, and on occasions was hired by that firm on a professional basis (1153).

In January of 1960 Mr. Weiss went to Mr. Leerburger's office and asked him if he was interested in performing professional engineering services for the Board of Education (1154). Such work is not awarded on a competitive basis, but rather is awarded directly by the Deputy Superintendent of Schools. Mr. Leerburger indicated that he was interested in performing such services (1155). He then approached the engineering firm of Gibbs and Hill, and on February 1, 1960 proposed that a profit sharing arrangement be arranged

between Scharf and Leerburger and Gibbs and Hill relating solely to work performed for the Board of Education by Gibbs and Hill (1155-57).

It is important to note that although Mr. Weiss offered the engineering work to Mr. Leerburger the contract was awarded to another engineering firm. Mr. Leerburger stated to a Special Agent of this Commission that Gibbs and Hill was approached because additional engineers were needed to perform this work.

Under date of January 19, 1961, the following memorandum was written by Mr. Leerburger for his own files:

"On Thursday, January 19th, I met with Joseph R. Weiss at his office, where I learned that somewhat less than six million dollars had been established in the City's capital budget for the rehabilitation of old school buildings. This amount was thought to be inadequate by the Board of Education, and the Mayor and the Planning Commission had been requested to review the matter for an additional ten million dollars for this work.

"Weiss believed that he would have something like \$16,000,000 to \$18,000,000 during the course of 1961 and probably before June, and that he planned that some of this work would go to Gibbs and Hill and me." (1159-60).

Thus it is apparent that Weiss fully intended to continue the devious awarding of lucrative Board of Education work to his old associate Leerburger through the medium of Gibbs and Hill.

viii) *P.S. 203, Queens*

On October 15, 1959 at approximately 2:00 p.m. the bids were opened for the construction work at P.S. 203, Queens. The opening revealed that two builders, Caristo Construction Company and Mars-Normel Associates, had entered identical bids for the general construction work in the amount of \$1,430,000. According to rules promulgated by the Bureau of Construction in 1951, tie bids were to be resolved by public drawing at a regular meeting of the Board of Education. Although Deputy Superintendent Weiss knew this, he decided to take matters into his own hands, and within hours after the bid opening, the Bureau of Construction "grapevine" informed Mars-Normel that Weiss had selected the Caristo Construction Company for the job.* Weiss confirmed the accuracy of the state-

* Martin Singer, Vice President of Mars-Normel Associates, was notified of this decision by an anonymous telephone call.

ment when called by the Vice-President of Mars, and at his demand agreed to a conference the following morning.

Such a conference was held between Messrs. Weiss, Martin Singer and Sam Singer at Mr. Weiss' office in the Bureau of Construction. At such time, when the Singers indicated they would fight Weiss' decision, Weiss made a minor concession and he suggested that perhaps the Singers could perform a joint venture with Caristo. To this end Weiss called the office of Max E. Greenberg, counsel for Caristo, and set up an appointment between the Singers and Mr. Greenberg for 1:00 p.m. that day, October 16, 1959 (1233). This meeting was held and Mr. Greenberg promised to do what he could to resolve the tie bid in an amicable fashion.

Over the weekend there were many calls made by Mr. Greenberg, as the intermediary, to Vincent J. Caristo, President of Caristo Construction Corporation, and Martin Singer. Caristo was firm in his refusal to accept a joint venture as long as Weiss remained firm in his resolve to award the contract to Caristo. The problem was ultimately narrowed to one of agreement on a dollar amount to be paid by Caristo to Mars for a "voluntary withdrawal." The sum of \$11,000 was agreed upon, this being the approximate cost to Mars of bidding all jobs divided by the number of successful jobs for a stated period.

According to Weiss' testimony, on Sunday, October 18, 1959 he spoke with Superintendent Theobald, and sought advice in resolving the tie bid. Dr. Theobald allegedly informed him that it had to be resolved by a chance drawing, but did not specify the manner or place in which such drawing was to be held (1233-4). The credibility of this particular testimony, along with the rest of Weiss' testimony about P.S. 203, Queens is strongly in issue, and is treated in detail later on in this report.

Early in the morning of October 19, 1959, Max Greenberg called Weiss and indicated that Mars had agreed to withdraw on condition that there be a face-saving coin toss in Weiss' office that day. Mars did not want the staff of the Bureau of Construction to know that Weiss held Mars in the same low esteem as did his predecessor, Mr. Correale. Mr. Greenberg assured Weiss that the toss would be a mere formality, and that Caristo would emerge the winner at such time (1188-90).

At 2:00 p.m. on October 19, 1959, the toss was held in the office of Superintendent Weiss. Present were Joseph R. Weiss, Max E. Greenberg, Martin Singer, Sam Singer, Lou Bruno (General Manager for the Caristo Company), Jules Haut, and Carl Peterson

(former Chief Engineer of the Bureau of Construction). Mr. Greenberg tossed the coin in the air; Mr. Bruno called "heads." After announcing that Caristo had won, Mr. Greenberg proceeded to pocket the coin without displaying it to anybody. Mr. Haut remarked, "Say Max, let's see the coin." General laughter was evoked by his request, which together with subsequent events, indicated that neither Mr. Haut nor Mr. Peterson had been cued on the "script." Immediately following this brief meeting, Martin Singer told Haut that Mars was receiving an \$11,000 "consolation prize." Haut immediately reported this information to Weiss, who made no comment thereto (1211-14).

Later, on October 22, 1959, at the next regular meeting of the Board of Education, there was a fishbowl drawing in connection with the tie bid, and the winner was the Caristo Corporation. Neither Caristo nor Mars or their counsel were informed of this drawing, although it was a firm Board of Education policy to notify tie bidders.* Although the printed minutes of the Board of Education meeting held on this day are admittedly false as they relate to the P.S. 203 Queens situation, there is no showing that the drawing was other than legitimate (Pr. H. 12,267).

On April 27, 1961 the office of the City Commissioner of Investigation submitted a report on this tie bid to the Mayor, who in turn forwarded the report to the Board of Education on May 8, 1961. Mr. Harold Hay, Secretary of the Board, immediately made copies of the report and had them personally delivered to each of the nine Board members on May 9, 1961. On May 19, 1961, there was prepared the agenda for the next Board meeting, scheduled May 25, 1961. Although the P.S. 203, Queens report had been in the possession of the nine Board of Education members for a little over a week, no one saw fit to include it on the calendar of the forthcoming meeting. In fact it was not included on the agenda until after the May 25th meeting had commenced.** On the day of the meeting, the conduct of Caristo and Mars was considered so reprehensible that both were immediately and summarily debarred from bidding on any further Board of Education construction.

It is not the function of this Commission to pass on issues of law, and the issue has already been placed before the courts. In connection with this matter Superintendent Weiss' credibility was destroyed in two major areas.

* There are many tie bids in connection with maintenance and supply work.

** On May 19, 1961 a Special Agent of this Commission was sent to the Board of Education to secure all official files pertaining to this school.

First, Weiss has steadfastly maintained that he had no knowledge of the "fixed" coin toss (1236; 1239-40), despite the following:

a. Max Greenberg testified twice at the public hearing that he had so informed Weiss before the coin toss (1188-90; 1324).

b. Martin Singer testified at the public hearing that just before the coin toss Weiss asked him "Are you happy now?" (1206).

c. Jules Haut testified he informed Weiss that immediately following the coin toss Martin Singer told Haut that an \$11,000 "consolation prize" was to be paid by Caristo to Mars (1213-14).

Second, Weiss destroyed his own creditability on the further question of his authority to resolve the tie bid. The following chronology of his own statements under oath illustrates this point:

a. New York City Department of Investigation, early in 1961: Weiss testified at a hearing in that office that he thought he had the authority to resolve tie bids, and that an innocent error had been made on his part, said error being attributed to the fact that he had only been in office a little over a month.*

b. New York State Commission of Investigation private hearing held on June 1, 1961:

At first Weiss testified as he had in the office of the Commissioner of Investigation of the City of New York. However, before Mr. Weiss left the private hearing he acknowledged that he knew all along he did not have the power, and that he acted as though he did because that is how he wanted to run the office (Pr. H. 12,570).

Such admission from Weiss was not volunteered, but was elicited when he was confronted with another tie bid situation, a scant three weeks earlier, on September 16, 1959. On that occasion there was a tie bid for the electrical work at P.S. 128, Manhattan, between A. I. Smith Inc. and David Coyne and Co., Inc. At that time Weiss chose Coyne in the same fashion that he was to choose the Caristo Construction Corporation a few weeks later. However, his desire to choose the Coyne Company was frustrated because one of the officers of A. I. Smith Inc. sent a registered letter to Weiss and to the Board of Education, calling attention to the fact that it was the Board of Education policy to resolve these ties by public drawing, and not by choice as exercised by the Superintendent of Construction. Weiss protested this lack of power, and at an Executive Session of the Board of Education held on September 24, 1959 he requested that he be

* Report of Department of Investigation of City of N. Y. dated May 4, 1961 MR 61-80.

granted the power (1225-6). His request was tabled until the October 22, 1959 meeting. In other words, the record is clear and conclusive that no later than September 24, 1959, Weiss definitely knew that he did not have the power which he later swore he possessed. It was only when confronted with these facts that Weiss admitted he always knew he was not authorized or empowered to resolve the P.S. 203, Queens tie bid on the basis of his own choice.

c. New York Supreme Court, Kings County litigation involving the P.S. 203, Queens situation. On June 15, 1961 in that litigation Weiss swore under oath in an affidavit as follows:

"I was appointed to my present position on September 1, 1959. On October 15, 1959, when the identical bids were opened, I was mistakenly under the impression that under Section 103, Subdivision I, of the General Municipal Law, that I, as Deputy Superintendent for Construction and Maintenance, had the authority to award the contract to either of the identical bidders."* (1231).

In other words, only nine days after Weiss admitted under oath to this Commission that he knew he did not have the power, he swore directly to the contrary in connection with very important court litigation. At the Commission's public hearings, Weiss was asked to resolve these diametrically opposed positions.

"By Mr. Okun:

Q. Mr. Weiss, perhaps you can explain to this Commission how on June 15, 1961, you could execute an affidavit in a court action indicating that you thought you had such power, when, on June 6th, some nine days earlier in the same year, you testified before this Commission under oath, represented by counsel, that you knew you did not have that power?

Can you reconcile the two statements?

A. Well, I testified and that's it.

Q. Pardon me?

A. I testified to it, and that's it." (1232).

d. Commission of Investigation Public Hearing on June 29, 1961:

When asked about the P.S. 203, Queens tie bid, Weiss again repeated the story he originally told the Commissioner of Investigation of the City of New York and the New York Supreme Court. Once again, this time before the assembled public hearing, Weiss ac-

* Introduced at public hearing as Commission's Exhibit 75.

knowledgeed that his statement was untrue, and that he knew it to be untrue. The events of June 6, 1961, repeated themselves and Weiss again admitted that his action in favoring Caristo was beyond the authority he then had, and that he knew it to be the case back in October of 1959 (1228).

It is difficult to reconcile Weiss' continual vacillation on this point. In any event, by his testimony before the Commissioner of Investigation of the City of New York the New York Supreme Court, and this Commission, he has demonstrated either that he has a light regard for the truth, or that he does not know to what he has testified, even though such testimony has been given under oath before important tribunals or agencies.

VI. Board of Education*

As is commonly known the Board of Education of the City of New York is comprised of nine non-salaried members selected by the Mayor of the City of New York. Prior to the recent legislative changes enacted on August 21, 1961, there were no restrictions on the Mayor's choice. It has been suggested that political desirability or clearance was sometimes a factor. Geographic as well as minority group representation have also been traditional factors, and attainment of a goal of "balance" of such considerations sometimes seemed more important than accumulation of skills pertinent to the management of the City's educational system. This Commission's investigation into school construction brought it into very modest contact with the actual members of the former Board of Education and its operations, but such contact does provide the basis for several constructive observations.

A. Cumbersome Administration and Inefficient Operating Procedures

1. Excessive Concern with Routine Administrative Matters.

Several special studies made in the past suggested that the Board limit its activities to policy making, and that routine administrative matters be relegated to the Superintendent of Schools. Under existing procedure, for instance, the members of the Board must pass on every dollar spent in school construction, whether it be five dollars or five million dollars. They must approve each purchase of books

* Unless otherwise stated, all references to the Board of Education in this section are to its nine members prior to August 21, 1961, when they were dismissed by the New York State Legislature.

or supplies, just as they must approve every personnel assignment from school lunch helpers to the Superintendent of Schools. Harold Hay, Secretary of the Board of Education, had this to say about Board procedures:

"We are operating under a format which, in my judgment, is quite outmoded, hasn't changed much in 60 years. For the most part we operate like a school board in a small town which may build one school every ten years. Every item of expenditure has to come to the Board and that accounts for that large mass of administrative detail that the Board members go through.

COMMISSIONER GRUMET: Isn't it a fact that, as a result of that, very often they do not know what they are voting on?

THE WITNESS: Quite probably. They cannot possibly, in my judgment.

* * *

COMMISSIONER GRUMET: . . . Isn't it a fact that in many instances it is fair to say—and this is no reflection on you personally—that the members of the Board operate as rubber stamps?

THE WITNESS: To a large degree I think it is inevitable under the present operation, because I think we have up to 150 items on the calendar which have supporting documents—some of their papers extend this far (indicating) when they bring them into the Board room, all supporting documents. If they were to read all of this, it would be physically impossible.

COMMISSIONER GRUMET: So that my statement is a fair one?

THE WITNESS: Unquestionably you are correct. Some steps have to be taken to eliminate the large amount of administrative detail." (1176-8).

2. The Board is Inadequately Informed on Many Matters.

Illustrative of this condition is a recent instance relating to the very important subject of acquisition of property for a proposed school. One of the Board members voted to purchase property in which he had a major financial interest. When this fact was revealed the member stated that his vote for acquisition was made without knowledge of the specific location of the site and without knowledge that he had an interest therein. He freely acknowledged that it was not possible for Board members to be fully informed on all matters

on which they voted. Indeed, on many matters, the subject example being among them, the Board does not even take the time for discussion. When the Board member was pressed to explain such a state of affairs, he protested as follows:

"Now, wait a minute, just a minute. Now let's be fair about this. I am not a paid staff member." (Pr. H. 176-II).

Another very important act of the Board was taken without due deliberation or full knowledge of the underlying facts. Reference is made to the Board's summary debarment of the Caristo Construction Corporation and Mars-Normel Associates because of their actions in connection with the tie bid for P.S. 203, Queens. When this matter was litigated in the New York Supreme Court, Kings County, the following facts emerged:

Two of the nine members of the Board were not present or did not vote. One of the members testified that he voted against the resolution, although his vote is recorded in favor thereof. A fourth member voted under a totally mistaken impression of the underlying facts.* A fifth member testified that he knew little about the details which led to the introduction and adoption of the resolution. He explained his vote saying, "What else could we do?"** A sixth member testified that the members of the Board felt that they were "under pressure" to do something because of the publicity and the investigations being conducted.***

3. Poor Attendance Record.

In view of the Board's refusal to divorce itself from much of the routine administrative chores, one might reasonably assume that the great volume of work before it would ensure faithful attendance at Board meetings. Unfortunately, such was not the case, as Schedule 14 reveals:

4. Inadequate and Misleading Minutes

The State Department of Education requires that all action taken by the Board of Education at regular meetings be recorded.**** A stenographic reporter is in attendance at all public meetings of the

* The member thought that there had been collusion in the original bidding.

** Matter of Caristo Construction Corporation, New York Law Journal, October 26, 1961, p. 16.

*** The above facts were derived from the opinion of Mr. Justice Friedman in the matter of Caristo Construction Corporation, New York Law Journal, October 26, 1961, pp. 15, 16.

**** Matter of Kramer, 1951 . . St. Dept. Educ. . . , File No. 5652.

SCHEDULE 14

RECORD OF ABSENTEEISM OF BOARD OF EDUCATION MEMBERS 1956-1961

	1956	1957	1958	1959	1960	1961 (to August)
	20	21	19	15	24	19
TOTAL MEETINGS HELD						
ABSENCES						
ADAMS, FRANCIS W. H.**		5	3	5	10	9
BENSLEY, CHARLES J.	8	3	2	2	1	4
CLAUSON, ANDREW G.	5	3	3	2	4	6
LANZA, VITO F.	6	5	3	4	6	5
RANK, CHARLES F.	5	1	3	3	5	1
SANDS, MRS CECILE RUTH	3	4	3	5	7	7
SILVER, CHARLES H.	1	1	3	3	1	1
TAYLOR, REV. GARDNER C.**			3	3	9	7
WALSH, CORNELIUS J.	10	5	4	5	5	10

*Appointed June 6, 1957

**Appointed April 10, 1958

Board. Unfortunately, his presence does not ensure accurate minutes. The Secretary of the Board testified as follows at the public hearing:

"Q. Am I correct in stating that a stenographic reporter is present during the public meeting?

A. Yes.

Q. And that he takes stenographic minutes such as this gentleman is taking at the moment?

A. That is correct.

Q. But am I also correct in stating that the minutes, as printed up and distributed as representing the contents of the meeting very, very often do not reflect that which transpired during the meeting and do not reflect that which is recorded in the stenotypist's notes?

A. I would go further than that and say that they do not by any means reflect all of the proceedings. They do reflect all of the actions taken by the Board of Education, but they do not carry the verbatim transcript of what takes place unless it is colloquy between a Board member and a person from the floor. This is included in the minutes." (1167-8).

For instance, the Commission determined that the fish-bowl drawing to resolve the tie bid for P.S. 203, Queens was not held during the public meeting of the Board, as stated in the minutes of the meeting of October 22, 1959. Rather, the drawing was held after the meeting was adjourned, when only one member was present at the time of the drawing.* Both contractors affected by the drawing testified that they were never invited to, or even informed of the drawing. Adequate minutes might have reflected the fact that no representatives of the contractors were present and that the Board had not made provision for notice of the result. Serious legal questions may flow from actions of the Board. The public should be able to rely on the accuracy of the printed meeting minutes, to know that they reflect all that has transpired at such meetings.

B. "Upkeep" of the Board of Education Members

It is generally known that the nine Board members serve without any direct recompense. What is not generally known is that the upkeep of the Board was in excess of \$175,000 per annum. This figure is limited to direct staffing expense.

* A quorum of five members is required for action by the Board.

Each of the Board members had available for his use a full-time car* and chauffeur. The direct salary of these chauffeurs was approximately \$44,000 a year.**

Another item of significant cost was that of the Confidential Secretaries to the Board members. The salaries of these secretaries ranged from \$8,000 to \$10,220, totalling approximately \$78,000 per annum.

In addition to Confidential Secretaries, three of the Board members had Administrative Assistants; their salaries ranged from \$6650 to \$6950, totalling \$20,550. Also assigned to the Board members were eight stenographers and clerks. The salaries for the stenographers ranged from \$3430 to \$5090. The range for clerks' salaries was \$3750 to \$6050. The total expense for stenographers and clerks was \$34,340. In sum, a total of twenty-nine full time, paid personnel were directly assigned to the Board members.

It should be recognized that appropriate discharge of the Board's functions, even if streamlined and modernized, demands a substantial contribution of time on the part of its members. If it is determined that these demands cannot be met by the City's leading citizens on a voluntary basis, then consideration of a smaller, paid Board might well be in order.

VII. Changes Produced by the Commission's Investigation

The greatest satisfaction to be derived by an investigative body comes from knowledge that its work will result in constructive changes. The Commission was pleased to observe a number of significant changes taking place during the closing months of its work, prior to the public hearing. Most of the changes were ably described at the public hearing by Jules Haut, Administrator of the Office of School Buildings; he acknowledged the important role of the State Investigation Commission in effectuating the following changes:

A. Objective Evaluation of Architects

In early 1961 there was instituted an objective system for evaluation of private architects. The evaluation is blind-graded*** wherever possible, and although there will always be some subjectivity in any human evaluation, the system reduces to a minimum any dicta-

* The cost of these cars and the expenses incurred in their operation and maintenance has not been included in the \$175,000 figure.

** The new Board has voluntarily abandoned these privileges.

*** The architect's identity is concealed from the scorer.

tion of choice as to selection of architects, whether such dictation be based on political, personal or any other grounds. It eliminates the advantage formerly enjoyed by those with "friends in high places." It eliminates one-man choice, however well-intentioned such choice may be. The new system should utilize the skills of those people most knowledgeable in the field.

B. Post Audit Inspection

In addition to all prior inspectional procedures, a new system has been adopted whereby a team of Board specialists inspect a school after it is completed. This team makes a careful check of contract compliance, and where necessary, will cut into walls in order to check conformity with plans. Repairs to the completed structure will be made at Board expense if no fault is found. However, if a defect or omission is discovered, the contractor will be held responsible not only for the difference in cost between what was installed and what the plans required, but for any direct or indirect loss or damage resulting therefrom.

The inspection team does not include the original job superintendent, and Mr. Haut testified that he considered reliance on the job superintendent for this purpose one of the major fallacies of the old inspection system (1101). It is anticipated that the new system will work as a check on both the job superintendent and the contractor. Any value from an improper relationship between the contractor and the job superintendent is considerably diminished. Mr. Haut agreed with the Chairman's comment that: "In other words, as I understand it, Mr. Haut, by having this second agency come in and check the work, it does away with the temptation of a contractor who shortcuts, and the temptation in the case of some inspector of possibly being paid something for overlooking defects." (1102).

A further anticipated gain from the new system is the hope that once contractors realize that everybody will be held to the same impartial standards of performance, there should be a sorely needed increase in competitive bidding for school work.

C. Change in Punch List Procedures

Another new procedure which has been established is a common punch list, one prepared by a number of different people who in fact check on each other. This is a vast change from the old system where the original punch list was prepared by the very same job

superintendent who supervised the entire job. While this system has already proven to be unpopular with Bureau of Construction personnel, it certainly is in order and may be expected to make punch listing a far more valuable part of the program than it ever was in the past. It provides both Board of Education employees and the contractor with an additional reason to discharge their respective obligations properly.

D. Reorganization of Inspectional Methods in the Bureau of Plant Operation and Maintenance

A complete change in the inspectional procedures has been effected in maintenance work. The objective has been to avoid concentration of inspectional powers and approval authority. The system is a complex one and no effort will be made to describe it herein. Sufficient to say that the changes made therein are similar in purpose to those made in the inspectional system of the Bureau of Construction.

The work of that part of the Board of Education concerned with construction and maintenance of the physical plant has long been cut out for it. Following the Commission's investigation, other City and State governmental units have observed the vastness of the required work and the incredibly poor attention paid to one large part of it, the maintenance program. The Commission's public hearing has afforded the general public an opportunity to observe these conditions. This knowledge should provide sufficient impetus to effect lasting changes and improvements.

VIII. Concluding Statement of Chairman Sarachan at Public Hearing

"For some time this Commission has conducted a thorough and careful investigation into the manner in which the Board of Education of the City of New York has been discharging one of its most important duties—the construction and maintenance of school buildings. This investigation has centered, with but one or two exceptions, on new schools built just within the past few years. Our efforts culminated in the six days of this public hearing to inform the people of this City of many important facts, vital to their welfare and the safety and welfare of their children.

"Many millions of dollars have been spent and many more millions of tax dollars will be spent in the future on school construction. It is imperative for economy in the already over-burdened govern-

ment of the City, and for the health, safety and proper education of New York City children, that future construction programs be administered effectively and efficiently, under competent leadership, in a climate free from political interference and corrupt practices.

"It is quite apparent from the evidence presented here that this will not be the case unless those responsible recognize the compelling need for corrective action.

"The evidence of this hearing shows undoubtedly and conclusively that the construction and maintenance program has been woefully deficient in four major areas:

"First: Improproprieties in the selection and supervision of architects have resulted in certain instances in faulty plans and design;

"Second: Execution of plans by various contractors was hasty, slipshod, and careless of contract requirements and specifications in degrees that range from callous indifference to virtual fraud;

"Third: Supervision of construction by Board of Education personnel suffered to a shocking extent due to inefficiency, inadequately trained staff, ineffective liaison, lack of effective leadership, and a sorry atmosphere of corruption and hand-outs;

"Fourth: Almost complete lack of sincere, determined follow-up by Board officials permitted glaring construction defects to go uncorrected for years in spite of timely and repeated urgent appeals from school principals, teachers and custodians.

"Those of us who sat in this hearing room heard repeated over and over again for us a round-robin of correspondence back and forth among various officials of the Board of Education, 'passing the buck,' but no effective action.

"One result of these grievous defects has been incalculable waste of taxpayers' funds. Another, of greater significance, and especially of deep concern to this Commission has been the unchallengeable proof of conditions in schools which constitute serious hazards to the physical safety, health and well-being of pupils and teachers.

"It should not be necessary for me to recount the long and dreary list of conditions of waste and hazard; Cinder blocks and rubble falling into the seats of a recently vacated auditorium, numbing temperatures in many classrooms, cracked walls, leaky roofs, loose bricks, copings, children trapped in classrooms because of defective

locks and doors, explosive boilers—all these and more built into new and expensive school buildings.

“A sad picture of bungling waste is clearly painted by the ludicrous installation of an antiquated, inaccessible ice air conditioner in a new school that can’t even be used. In this regard we also point to a running track at one school and a playground at another that became unsafe and unusable after expensive renovations.

“Most significant is the fact that the evidence presented at this hearing was taken in large measure from the files and records of the Board of Education itself. In view of this fact, the allegation that this Commission kept evidence of defects secret from the Board is just ridiculous. They had all these complaints and defects long before we did.

“The conditions of waste and hazard were detailed by principals and custodians, the Board’s own employees. The innumerable reports, punch lists and letters of complaint written by principals, custodians and teachers, which were taken right from the Board files and introduced here, serve to emphasize that most of these problems were brought to the attention of Board officials over and over again without effective response or correction.

“While neglect, incompetence and inefficiency were contributing factors, we must conclude from the evidence that these conditions also resulted from a long-existing system of pay-offs, gifts, shake-downs, and conflicting interests on the part of Board employees.

“As we have pointed out repeatedly during this hearing, corrupt practices on the part of rank-and-file employees was due in large measure to the failure of officials at higher levels to themselves observe proper standards of conduct and to provide subordinates with clear rules and correct examples to follow.

“The Commission’s purpose in this hearing has been to expose abuses uncovered by our investigation and demonstrate in an objective and constructive manner that basic and sweeping reform is required.

“We wish to make it clear that the superficial, almost frenzied actions of Board and other City officials in recent weeks, on the very heels of our investigation, is not the type of corrective action that is sorely needed, and is a long way from what will be required. We are gratified by the testimony of the Administrator of School Buildings of the Board of Education, that our investigation has already prompted some worthwhile changes. This is but a step in the right

direction. Nothing short of a complete revitalization of the entire Board and its staff will provide the people of the City of New York with the type of school administration to which they are entitled.

"We of the Commission feel that this has been one of our most important investigations, and as it bears fruit for the safety, health, and welfare of the City's children, the long efforts of the Commission and its staff will have become more than worthwhile."

TITLE III

EVENTS SUBSEQUENT TO PUBLIC HEARING

The changes made by the Board of Education which were motivated or accelerated by the Commission have already been discussed at length.* Even more significant steps were taken immediately following the conclusion of the Commission's hearing. On July 25, 1961 Superintendent of Schools John J. Theobald suspended Deputy Superintendent of Schools Joseph R. Weiss, and preferred charges of "conduct unbecoming his position and conduct prejudicial to the good order, efficiency and discipline of the service." A departmental trial was held before Hearing Examiner Theodore Kiendl.

IX. Action by the Board

A. Departmental Trials

The Corporation Counsel of the City of New York prepared nineteen specifications against Mr. Weiss. Included therein were charges relating to false testimony under oath before the New York State Commission of Investigation and the Department of Investigation of the City of New York, mutilation and destruction of personal financial records which were under scrutiny by investigative bodies, and violations of the Conflict of Interest Section in the New York City Charter. Mr. Weiss was found guilty of all these charges, among others.** The Trial Examiner recommended Mr. Weiss' discharge for his actions in two major areas:

a. P.S. 203, Queens Coin Toss (Specification 1-10)

"The very recital of these undisputed facts persuades the Trial Examiner that Mr. Weiss unquestionably participated in what has been variously described as a sham, a fix, and to quote Mr. Weiss, 'shenanigans.'

* * *

* Pp. 185-7 *supra*.

** The Corporation Counsel withdrew one of the nineteen specifications. In two of the remaining eighteen, the Trial Examiner found insufficient evidence upon which to base a finding of guilt. In sixteen, however, and included in these were the most serious accusations, the Trial Examiner found Mr. Weiss guilty as charged. See Report of Trial Examiner, October 27, 1961.

"It is difficult to accept Mr. Weiss' testimony that he did not know of the collusion that had taken place until the investigations disclosed it. He further testified that if he known what was going on, he should be 'fired.' (the word he used when testifying here.)

"In the opinion of the Trial Examiner, it doesn't make much difference whether Mr. Weiss fully realized what was going on at this meeting. If he fully realized the significance of what took place and so testified, he would condemn himself as an active participant in the deceitful procedure practiced by all the participants. If he did not realize what was going on, it is clear that he must have figuratively closed his eyes and ears to what he should have seen and heard, and must be responsible therefor.

"Consequently the Trial Examiner finds and reports that in substance each of the specifications involving the coin-tossing event has been sufficiently established, justified his suspension, and warrants his removal." (Report of Trial Examiner, pp. 10-11).

b. Erasure, Alteration, and Mutilation of Personal Financial Records Requested by the New York State Commission of Investigation and the Department of Investigation of the City of New York (Specification 10)

"Specification 10 charges that Mr. Weiss erased certain names on his check book stubs for the years 1956 to 1959 at the very time, as he well knew, that the state and city investigation authorities requested their production. The facts were proven almost literally as alleged in this specification, and by Mr. Weiss' own testimony were so conclusively proven that there can be no doubt that this charge must be sustained.

* * *

"Mr. Weiss testified that he did this to avoid the embarrassment that would ensue by the public disclosure of their names.

* * *

"Even taking Mr. Weiss at his word, he put himself in the almost impossible position of defending his inexcusable mistake in attempting to doctor up his records to avoid embarrassment on his part or on the part of others.

"Alone and regardless of all the other specifications, the proof adduced under specification 10 and the publicity that ensued

as the result of these erasures, in the Trial Examiner's opinion justified his suspension and discharge. Accordingly, the Trial Examiner finds that specification 10 has been conclusively proven, and recommends that on the basis of that specification alone Mr. Weiss be no longer permitted to hold office in the employ of the Board." (Report of Trial Examiner, pp. 12-13).

Departmental trials for conduct unbecoming Board employees have been initiated against thirty-three employees of the Bureau of Construction, and a number of other trials are contemplated.

B. Consultants

The Board of Education has hired a number of consultants to assist in the resolution of existing problems and to avoid a recurrence of such problems. These include engineers, management consultants, and attorneys.

X. Extraordinary Session of the Legislature

Most important of all the changes were those which flowed from an Extraordinary Session of the New York State Legislature held on August 21, 1961. Shortly after concluding the public hearing, the Commission forwarded a transcript to Governor Nelson A. Rockefeller, and New York State Commissioner of Education James A. Allen. On August 12, 1961, Commissioner Allen requested Governor Rockefeller to convene an Extraordinary Session of the Legislature, stating "this is a time of crisis for the schools of the city, and there can be no further delay in dealing with this crisis." The Governor immediately responded to this request and called a Special Session of the Legislature for August 21, 1961.

In his message to the Legislature, the Governor stated:

"The crisis in New York City's public schools stems from the reluctance of City leadership to assume its responsibilities and take decisive action. Specific corrective measures have been as consistently ignored as they have been consistently recommended."

The Governor referred to earlier studies made by then City Administrator Charles F. Preusse, and Dr. Henry T. Heald, but pointed out that conditions continued to deteriorate. The Governor stated:

"The event which brought the present crisis to a head, however, was the revelations developed by the State Commission of Investigation at public hearings in June of this year.

"These findings disclosed serious deficiencies in the administration of the school construction program with resulting waste of public funds, inefficiency, poor administration and corruption—all presenting serious hazards to the health, safety and proper instruction of the children of New York City.

"The State Commission of Investigation also uncovered the practice of special payment by private contractors to school custodians as well as other questionable practices in school administration.

"Based upon the evidence, the Commission called for corrective action in these words:

"Many millions of dollars have been spent and many more millions of tax dollars will be spent in the future on school construction. It is imperative for economy in the already overburdened government of the City and for the health, safety and proper education of New York's children that future construction programs be administered effectively and efficiently, under competent leadership, in a climate free from political interference and corrupt practices.

"It is quite apparent from the evidence presented here that this will not be the case unless those responsible recognize the compelling need for corrective action.

"The Commission's purpose in this hearing has been to expose abuses uncovered by our investigation and demonstrate in an objective and constructive manner that basic and sweeping reform is required.

"Nothing short of a complete revitalization of the entire Board and its staff will provide the people of the City of New York with the type of school administration to which they are entitled."

The Governor urged immediate legislation to remove the entire New York City Board of Education, and called for a method of selection of candidates calculated to remove this vital function from the political arena. The Governor requested that the new Board be empowered to remove from office the Superintendent of Schools, any Deputy Superintendent, and any Associate Superintendent. The Governor also requested that the power to appoint local school boards within New York City be removed from the Borough Presidents and transferred to the new Board of Education. He also requested that the new Board of Education be given "emergency

powers for nine months to assure ample authority to deal with the emergency situation.”*

In Extraordinary Session of August 21, 1961 the Legislature enacted legislation as requested by the Governor. A copy of the Act of the Legislature is attached hereto as Appendix F.

XI. Recommendations

INTRODUCTION

Investigation by the Commission of Investigation and disclosures made at its public hearing concerning the school construction and maintenance program of the Board of Education of the City of New York established the existence of gross neglect, inefficiency, corruption and political interference.

The evidence presented established that the school construction and maintenance effort in this City was bogged down in red tape, drifted without effective coordination, and lacked determination, vigor, and efficiency. Significant changes in policies and procedures are necessary to remedy the defects. In submitting the following recommendations, it should be stressed that a number of major changes have already been made, most of them as a direct result of this Commission's investigation. Jules Haut, Administrator of School Buildings, testified to some of these at the public hearing. They relate primarily to post-construction inspection, and enforcement of contractual rights against architects, engineers and contractors.**

In assessing the future of the public school construction and maintenance program the most important single factor will probably be the skill and dedication of the new members of the Board of Education, if control of this program is not shifted. However, other changes are not to be overlooked, for each in its own way can help provide the solid foundation which has been so sorely lacking for at least a decade.

Prior studies*** have directed efforts to examination of the Board of Education on its highest level, with particular emphasis on the respective roles of the members of the Board and the Superintendent of Schools. The Commission's investigation naturally brought it into contact with some of these problems. Its primary inquiry, however,

* The Full text of the Governor's message to the Legislature is attached hereto as Appendix E.

** These changes have been described in detail on pp. 185-7, *supra*. Whether the best possible combination has been achieved in the inspectional area will be determined only by the passage of time.

*** See Appendix A.

was limited to the construction area, and not general administrative problems. Accordingly, the Commission's observations in the latter area have been limited to those made in a prior section.*

A. Construction

The poor record of maintenance and the revelation of serious, uncorrected defects in new school construction make imperative adoption of some of the sweeping organizational and operational changes which follow:

1. *Formation of a Separate Agency***

The Commission recommends that there be established a Bureau of Construction and Maintenance which is not under the control of the Superintendent of Schools. Three possibilities present themselves, and in each the Director of the Bureau should be appointed by the Mayor:

a. The Bureau of Construction and Maintenance could be a totally separate and independent city agency.

b. The Bureau of Construction and Maintenance could be a division of the Department of Public Works.

c. The Bureau of Construction and Maintenance could remain as part of the Board of Education. If so the Director of the Bureau of Construction should be appointed by and be responsible to the Board of Education, and not to the Superintendent of Schools.

The projections of the school construction program for the next decade warrant the establishment of a separate agency. The present Bureau of Construction could be transferred *in toto* to this new agency, and the transition should present few problems. The Department of Public Works might properly be considered the base of operations of the new Bureau of Construction and Maintenance. It is possible that the experience gained by members of the Department of Public Works could be put to valuable use by the people responsible for the construction of schools. There might be some technical advantages in retaining the Bureau as part of the Board of Education. It goes without saying that there are many legal and practical considerations to be considered before choosing one of the three alternatives. The important point, however, is that adoption of any of the alternatives will reduce the likelihood of

* See Section IV.

** A number of the recommendations which follow have been made by one or more of the prior studies of the Board.

control by "educators" whose knowledge of construction and construction problems may leave much to be desired.

To be sure, there should be the fullest cooperation between an independent Bureau of Construction and the Board of Education, so that the physical needs and requirements of the Board of Education may be best served. But there is no apparent advantage in continuing the present system where the Superintendent of Schools can be expected to withhold criticism of the efforts of his own appointee.*

2. *Use of Private Architects*

As mentioned earlier, steps should be taken to decrease use and reliance on the services of private architects. The thinking underlying such proposal has been discussed earlier. One point which bears repetition concerns the vastly higher percentage of change orders in connection with the work of private architects. It leads to the following recommendation: Where it is deemed essential to utilize the services of private architects they should be afforded the opportunity to supervise their own work.** This would entail additional cost to the City, but such cost would be modest considering the probable gain in terms of fuller compliance with the architect's plan. This is the practice in private industry which is just as cost conscious as the City of New York. Naturally, the architect would then be held responsible for his supervision, whereas, under the present system, he is held responsible only for design errors.***

3. *Contractors*

a. Centralization of Responsibility

Throughout the Commission's investigation it heard testimony relating to poor coordination of work among the various contractors, with attendant delays and increased cost to the contractors.**** Prime contractors would often complain that their highly paid laborers were idle because another prime contractor or subcontractor failed to complete his work as scheduled. Consideration should be given to the possible advantage of holding one contractor responsible

* Even after Superintendent Theobald was fully advised by his own principals of the extent of the decay of the physical plant in the New York City school system, he persisted in describing Deputy Superintendent Weiss' efforts as "superb" (Pr. H. 13,903).

** The new Board has taken steps in this direction.

*** Even this responsibility was not imposed prior to 1961.

**** Such increase is eventually passed on to the City.

for the entire construction, rather than dividing responsibility among four different contractors, each of whom is a law unto himself.

It is possible that the general contractor will charge an additional sum for the added responsibility thrust upon him. On the other hand, he may effect such a substantial labor saving by having the job proceed smoothly and completed more promptly that his overall cost may be reduced. From the vantage point of the other contractors, there is a definite financial advantage in such a centralized system.

b. Elimination of "Brokers"

There was also much testimony relating to the work problems arising when the general contractor is a "broker," an individual who does little, if any, of the actual construction himself. Such a contractor is often inadequately represented on the job site, and as a result, there is poor supervision of his subcontractors who are left to manage for themselves. A "broker" may be a successful low bidder, as his overhead is usually a small fraction of that of the general contractor who performs his own work. However, the additional problems encountered on the job, including well above average construction delays, outweigh any moderate saving to the City. Accordingly, it is recommended that there be a prohibition against contractors who fail to perform a minimum specified percentage of the work with their own force.*

B. Legal

1. *Compulsory Arbitration*

Administrative delays and the cost thereof have long been one of the major complaints of contractors doing business with the Board of Education. It is clear that this is one of the primary reasons underlying the limited competition for school contracts. A contractor must meet his payroll on a weekly basis; if he is forced to wait a year or more for payment from the City, he may be forced out of City work, or in the alternate, he will pass on to the City in the form of a higher bid the cost of his financing for the period of delay. Two recommendations may be made in order to solve at least partially this pressing problem.

First, compulsory arbitration should be considered as a means of resolving disputes between contractors and the Board of Edu-

* At present a "broker" could be disqualified at the prequalification level, but the above proposal has the distinct advantage of making for uniform application of this principle.

cation.* Second, an appropriately high official within the Bureau of Construction should be required to certify in writing the reasons why payment is not being made to a contractor when more than 90 days have elapsed since submission of proper bills by the contractor. Under such circumstances, the contractor would be entitled to a specific and detailed bill of particulars setting forth the reasons for the withholding of monies claimed.

2. *Performance Bonds*

The present requirement of performance bonds for each school contract should be carefully reviewed to see if the facts warrant their continuance. In the Preusse Report, there was presented a statistical analysis of this subject.** It showed that during a seven year period bond premiums paid were over five times as large as losses via default. It establishes the pattern for further research which would be required at this time in order to arrive at an informed decision.

3. *Public Relations Firms Which "Peddle" Influence*

The Commission discovered that resort had been made by both architects and engineers to "public relations" firms in the effort to secure contracts for school work. The presence or absence of such firms should have no effect on an individual's relationship with governmental authorities. Employment of such firms to secure government contracts is highly offensive and makes a mockery of the criteria by which qualifications should be judged. There is, of course, the danger that a contract may be awarded to one who is less than the best qualified to do the task at hand. However, even if the award is made to a competent individual, the practice is still to be heartily condemned, if such award is politically inspired.

There should be inserted in the standard form of contract between architects, engineers and contractors doing business with the Board, a clause similar to that in Federal contracts, in which the contractor warrants that:

"... no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established

* There may be some technical legal problems attached to this suggestion, but they should be readily soluble.

** Preusse Report, pp. 54-55.

commercial or selling agencies maintained by the Contractor for the purpose of securing business."*

A first violation of this clause should be made grounds for disqualification from any further work for a specified period of time. A second violation should result in permanent debarment from further City work.

C. Personnel

Another major problem area uncovered by the Commission was that pertaining to personnel in the Bureau of Construction. These men operated in an atmosphere which tolerated the practice of widespread gift-giving by contractors to Board employees, and which failed to establish any guideposts relating to outside employment. Even when specific attention was directed to these important problems, no steps were taken to solve them.

1. *Outside Employment*

It is absolutely essential that a clear-cut position be enunciated concerning outside employment. The meaning of the City Code of Ethics could certainly be explained in clear and simple language, and not in the fashion so belatedly employed by Deputy Superintendent Weiss, that of merely distributing mimeographs of the statute. There should be a requisite that written request** be made by each employee who proposes outside employment, and that written permission be a prerequisite thereto. The employee should not be placed in a position of deciding for himself what is and what is not appropriate. Too many have demonstrated that they were incapable of making a correct decision in that regard. To determine the nature and extent of outside employment at the present time, each employee should be required to complete a form detailing pertinent information.

2. *Gratuities*

The subject of gratuities could be rather simply resolved in the overwhelming number of instances by a clear rule prohibiting employees from accepting any gratuity from anyone doing business with the City of New York. Placing an employee in the role of

* U.S. Order for Supplies or Services, Paragraph 11 (1961).

** Such request should contain full details concerning the proposed employment, including the name and address of the proposed employer, type of work, duration of work, time when work is to be performed and rate of compensation.

judge and jury in determining the reasonableness of a gift has not been satisfactory in the past. The proposed suggestion goes beyond any previous policy and does not call upon the employee to determine what is a thing of value. The prohibition should apply to gifts of any type, shape or form! Absolute prohibition may appear harsh, but it has the virtue of easy comprehension by all concerned.

3. Training Programs

The problems which flow when inadequately trained personnel supervise the construction of multi-million dollar projects require no detailed elaboration. Suffice it to say that they cause delays in construction as well as increased costs when on-the-job problems are not expeditiously or economically resolved. The Bureau of Construction should immediately institute training programs designed to familiarize new personnel with the tasks they will be discharging. It should also utilize refresher courses for other personnel to ensure that they keep pace with the developments in the construction field. Further, it appears that many employees could profit from training courses in specification reading and interpretation.

4. Annual Report Filing

Each contractor, architect and engineer doing business with the Board of Education should be required to file an annual statement in which he would set forth a complete record of any gifts, entertainment, or promotional expense incurred in connection with school work. Names of all relatives of Board of Education employees who work for the contractor, architect or engineer should also be listed. The standard form of contract should specifically prohibit any payments in property or money to any Board employee, and violation of this clause should debar the offending party from any further Board work.

CONCLUSION

The disclosures of this Commission's investigation have stirred public opinion and spurred governmental bodies and officials into positive action concerning the New York City school construction program. Many constructive changes already have been made, and undoubtedly many more will follow. However, the problems which still remain must be dealt with vigorously, imaginatively and with a sincere desire and firm purpose of accomplishment. It is hoped that the efforts expended in bringing this important matter to light will produce the type of reliable and efficient program for public school construction to which the people of New York City are entitled.

Respectfully submitted,

JACOB GRUMET,
MYLES J. LANE,
JOHN W. RYAN, JR.,
GOODMAN A. SARACHAN,
Commissioners.

January 1962.

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Comparison of Pertinent Findings and Recommendations made in the Preusse, Heald and Strayer-Yavner Reports

PREUSSE REPORT

HEALD REPORT

STRAYER-YAVNER REPORT

I. BOARD MEMBERS; ADMINISTRATION AND POLICYMAKING

Criticism

Board members' involvement in administrative matters "creates confusion and serious operating difficulties." (13).

"Board members have become involved in day by day administration." There is "no clear delineation of function and responsibility between the Board of Education and the administrative staff." (29).

Recommendation

Policy making should be the function of Board members while policy execution and day to day administration should be reserved to the Superintendent of Schools. Top administrators should have sufficient power to carry out their tasks and be held responsible for the efficient use of that power (13).

Members of the Board of Education should be relieved from considering the mass of administrative matters which properly belong in the hands of the professional staff. The Board should concentrate on major policy questions. Full control and responsibility for administration should rest with the Superintendent of Schools, and he should be held responsible as Chief Executive for all staff work (11).

II. SUPERINTENDENT OF SCHOOLS AND ADMINISTRATIVE STRUCTURE

Criticism

"The presence of a direct line of authority from the Board of Education to the Board of Superintendents . . . diminishes and impairs the authority of the Superintendent of Schools." (30).

PREUSSE REPORT

Recommendation

HEALD REPORT

No administrative practice should interfere with the legal responsibility of the Superintendent of Schools as the chief executive officer of the system. Therefore, the line of authority from the Board of Education to the Board of Superintendents should be abolished, and since Board members will cease functioning in administration, there appears "to be no further need for the position of confidential secretary."

STRAYER-YAVNER REPORT

The administrative structure should be revised so as to provide the Superintendent of Schools with the necessary assistance to execute his functions and responsibilities. To fulfill this, three new positions should be established:

- a. A Deputy Superintendent of Schools, who would be responsible for coordinating the work of Associate Superintendents, each of whom would be given a "specific functional responsibility";
- b. An Administrator of Business Affairs, whose most important responsibilities would be budget estimating, accounting and auditing, and fiscal controls;
- c. An Administrator of Housing, who would be in charge of buildings, modernizing, operating and maintaining school buildings. His office would have four major divisions:

1. Programming—responsible for effective plant utilization, determination of school building needs and establishment of priorities of need and site selection.
2. Construction and Contract Repairs—planning for construction of new buildings, and modernization programs.
3. Plant Operation and Maintenance—responsible for custodial services, and operation of general maintenance and repair services.
4. Administrative Division—responsible for providing facilitative services for the other three divisions maintaining personnel and general administrative work.

III. BUREAU OF CONSTRUCTION

A. *Formal Reorganization*

Criticism

Subordinate units of the Board dealing with school planning construction and maintenance suffer from faulty organization, dilution of executive power and unclear authority and definition of duties (16).

Recommendation

1. The Division of Housing should be reconstituted as the Office of School Buildings incorporating the function previously performed by the Board of Construction and the Bureau of Plant Operation and Maintenance. The office should be headed by an experienced building expert with the rank of Deputy Superintendent. He should have exclusive responsibility for constructing, operating and maintaining the school plant and answerable only to the Superintendent of Schools (17).

B. *Role of Bureau of Plant Operation and Maintenance*

Criticism

Though the Bureau of Plant Operation and Maintenance has facilities and is best qualified to undertake full examination of conditions of buildings proposed for modernization, the personnel of the Bureau of Plant Operation and Maintenance do not participate in the planning of modernization work, which is handled by the Bureau of Construction (26).

The present organizational structure of the school building program is inadequate to carry it forward (14).

1. The Division of Housing should be headed by a Deputy Superintendent who should have "unusual job qualifications"; "experience in architecture and construction, familiarity with maintenance and operation and a background in education." (31).
2. The uncoordinated activities of programming and school planning, etc. should be placed in a Bureau of School Planning and Research (41).

1. The Bureau of Construction should be reorganized so that its Chief is one primarily "competent as an administrator," rather than as an architect (23).

2. A Research Bureau should be established in the Division of Housing and should be responsible for "examining new ideas in school design."

PREUSSE REPORT

HEALD REPORT

STRAYER-YAVNER REPORT

IV. NEW ROLE FOR ARCHITECTS

Criticism

1. The voluminous set of instructions in the Manual of School Planning coupled with the requirements of New York's out-of-date Building Code tend to discourage imaginative and economical designs by architects. Similarly, review of school plans during the design process is too cumbersome and expensive (49).

Recommendation

1. The Manual of School Planning should be modernized and simplified so as to include only those provisions which the Board considers mandatory for every school (49).

Criticism

2. A major fault in supervision and inspection of projects is that many of the project superintendents are not professionally qualified to supervise these building projects (5).

HEALD REPORT

PREUSSE REPORT

Recommendation

2. On a trial basis, the practice of requiring architects to supervise the construction of buildings should be instituted.

(a) In the use of private architects, there should be an agreement concerning the supervising force and the size and type of inspection staff that will be provided by the architect;

(b) In the case of Board of Education designed projects, the construction should be supervised by a member of the designing team or by another professional engineer or architect of the Board of Construction (50).

It would be a useful experiment to delegate to the private architect supervisory responsibility in the school construction area and also suggest the advisability of employing the architect with regard to site selection and establishment of preliminary cost estimates (22).

V. REVISION OF CONTRACTING SYSTEM**A. Need for Single Overall Contractors****Criticism**

1. Failure to have a single contractor in charge of an entire building project necessitates that a large portion of the time of the Board's project superintendent must be spent on coordinating the work of four separate "prime" contractors and settling their disputes, thereby often causing serious neglect of the Project Superintendent's principal duties of enforcing the provisions of the plans and specifications.

Recommendation

1. Section 101 of the General Municipal Law should be amended to eliminate the requirement of four independent contracts on school building projects. The new law should provide for (1) receiving independent bids for each of the three trades; (2) forwarding such bids to eligible general contractors to incorporate in their overall bids; and (3) letting one contract for a school project under which the successful general contractor assumes centralized supervision of work and complete responsibility to the Board of Education for the entire building project (52). The Bureau of Construction's tolerance of "broker contractors"—those who farm out all or most of the work to contractors—should be eliminated. "Every general contractor should be required to perform a substantial amount of the work on each school building project with his own forces." (56).

B. *Contractors and Guarantee Period*

Criticism

The very small percentage of money withheld by the Board of Education from the contractor at the "stage of substantial completion" does not provide enough incentive to induce contractors to complete their contracts promptly. Delays sometimes run beyond the one year guarantee period which starts when the job is declared "substantially complete."

Recommendation

All work under the contract should be entirely finished before the guarantee period starts running. The purpose of the guarantee period is to provide time for discovering or correcting any defects in fully completed work for which the contractor is held responsible. The system of retaining ten percent of interim payment should be followed until half the total payments have been made. This amount left should not be released on the current basis of "substantial completion," but should be withheld until all work is fully complete and acceptable (54).

C. Change Orders

Change order practices and procedures should be revised so that the Bureau has a preliminary estimate of the change order which can be used as a guide in checking the contractor's estimate. The contractor should be instructed to submit an estimate before the extra or omitted work is started; a price settlement should be reached before work on the change order commences.

D. Arbitration Recommended

A standard arbitration clause should be incorporated in the contract by the Bureau of Construction to enable adjustment of disputes and thereby eliminate the need for legal action with its concomitant of time and money for the Board of Education (343-44).

1. Contractors should be required to make repairs of faulty construction at the beginning of the guarantee period so as to induce proper repairs initially (336).

2. The Division of Housing should be the key repository of all complaint during the one year guarantee period, and should examine them and divide them into emergency repairs, defects requiring early correction, etc.; after such editing, the Division of Housing should give precise and direct instructions to the Bureau of Construction and devise a system to follow them up (336).

PREUSSE REPORT

E. *Revision of Standard Specifications*

Criticism

1. The Board of Education's standard specifications are out-dated and have the following defects:
 - (1) ambiguous requirements;
 - (2) inconsistencies between the written specifications and pertinent drawn plans;
 - (3) numerous instances of virtual monopolies, resulting from specifying special instead of manufacturer's standard items;
 - (4) the obsolescence of numerous items in the specifications;
 - (5) discrepancies in some cases among the four sets of standard specifications (one for each prime contractor) in that some items must be repeated in two or more sets, but there are inconsistencies among the different sets (57-58).

Recommendation

1. These standard specifications require full revision and a study to attain this objective should be made by outside experts in building specifications.

Criticism

2. In regard to specifications for small repair contractors, they are often incomplete and ambiguous; drawings and sketches are not employed extensively enough. This is often caused by lack of training in the specification writing by the field inspectors of the Bureau of Plant Operation and Maintenance (59).

Recommendation

2. Field specifications of the Bureau of Plant Operation and Maintenance should be reviewed by supervisors and the kind and amount of work necessary should be determined by field personnel and stated with precision in the specifications (59).

F. Auditing

Criticism

Present auditing procedures regarding inspection of contract work which necessitates repeated checks by the operating bureaus of the Board, the Administrator of Business Affairs, and the Engineering Division of the City Comptroller are an example of diffused responsibility and duplication of work with the result that payment to contractors is delayed. This in turn reduces bidders for Bureau of Construction work.

Recommendation

The Operating Bureau of the proposed Office of School Buildings should be held primarily responsible for inspection and certification of payments to contractors (16).

The Comptroller should exercise no pre-audit functions regarding inspections but should strengthen his post-audit inspection and recommend improvements of all cost accounting procedures (43).

APPENDIX B

MINIMUM REQUIREMENTS FOR SCHOOL CUSTODIAN

AS PRESCRIBED BY NEW YORK CITY CIVIL SERVICE COMMISSION

“Minimum Requirements: (1) Three years’ experience as a Superintendent in responsible charge of private or public buildings with at least 30,000 square feet of floor area; or (2) three years’ experience as an Assistant Superintendent in responsible charge of private or public buildings with at least 60,000 square feet of floor area; or (3) three years’ experience as an assistant custodian, foreman, handyman, fireman, or other comparable assistant to a custodian in a school building of at least 50,000 square feet of floor area plus 120 hours of appropriate educational credit at the time of appointment, for training courses in building operation and management in any three of the following four areas: building administration, heating, cleaning, boiler operation and minor repairs. Any one of the following may be substituted for two of the years required in either (1) or (2) or (3) above: (A) possession of a valid New York City Stationary Engineer’s License; or (B) two years experience as a licensed marine engineer handling plants of 1,500 H.P. or greater; or (C) a baccalaureate degree in engineering or property management issued upon completion of a four-year course in an accredited college or university; and (D) two years of experience as a maintenance man or mechanic in the mechanical trades.”

APPENDIX C

MINIMUM REQUIREMENTS FOR SCHOOL CUSTODIAN-ENGINEER

AS PRESCRIBED BY NEW YORK CITY CIVIL SERVICE COMMISSION

"Minimum Requirements: (1) Five years' satisfactory practical experience of a character to qualify for the duties of the position in the supervision of cleaning, operating and maintaining building structures and grounds and their related mechanical and electrical equipment. One year of such experience must have been in responsible administrative charge as a superintendent or assistant superintendent of buildings, comparable to school buildings supervised by custodian engineers in the Department of Education; or (2) a satisfactory equivalent.

"Appropriate engineering educational training, or satisfactory ship-board engineering experience, in at least the capacity of Junior Engineer or equivalent title, will be accepted in lieu of the above general experience on a year for year basis up to a maximum of four years.

* * *

"License Requirement: Candidates must possess a valid New York City Stationary Engineer's License. This license must be presented to the Investigation Division at the time of investigation and to the appointing officer at the time of appointment."

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APPENDIX D

REPORT OF INDEPENDENT ENGINEERS RE J.H.S. 142, BRONX AND P.S. 138, BRONX*

No. 1—J.H.S. #142, Bronx, N. Y.

I. Sidewalks

- A) The presence of lumps of the black admixture near the surface has resulted in extensive pitting of the sidewalk areas. This would indicate that the admixture was not properly mixed in the sidewalk concrete.
- B) The surface is badly spalled in many areas.
- C) Scoring of this concrete is very shallow.
- D) Provision for expansion has been omitted at some locations; irregular cracking has occurred.
- E) The surface is not uniform in color or texture.

II. The Thickness of Sidewalk Concrete and Cinder Fill is as follows:

Core Number	Location	Depth of Concrete	Depth of Cinder Fill
1	Main Entrance	5.0"	6.5"
2	Main Entrance	5.0"	6.5"
3	No. 2 Entrance	4.5"	3.75"
4	No. 2 Entrance	5.5"	4.50"
5	Sidewalk Near Entrance No. 2	5.25"	5.0"
6	Entrance No. 2	4.125"	5.0"
7	Entrance No. 3	4.75"	0.0"
8	Entrance No. 3	4.75"	5.0"

The depth of sidewalk concrete required is: 4.0"

The depth of sidewalk cinder fill required is: 6.0"

III. Roofs

A) Gymnasium

Bituminous material was observed dripping through joints between the precast roof planks and in some instances through the centers of some porous plank. The joints were

* Introduced at public hearing as Commission Exhibit 34.

not properly pointed per Article 131 A-C of specifications.
(Photos of the above condition attached.)

Photograph No. 1 — Shows bituminous leaking through center of roof plank and also at joints.

Photograph No. 2 — Shows holes in center of plank indicating such planks to be substandard.

Photograph No. 3 — Shows bituminous leaking through three (3) consecutive joints.

Photograph No. 4A — Shows joints between planks. This
& No. 4B joint opening measured $\frac{5}{8}$ inches.
Joints should be tightly butted.

Photograph No. 5 — Shows condition of gym floor due to leakage of bituminous through roof planks.

The conditions described above are representative of many areas in the gymnasium roof.

Cores were taken from the gymnasium roof to determine the number of layers of felt in the built-up roofing. The cores were found to have four (4) layers of felt. One core was taken at the joint of two precast roof planks. When this core was removed, it was found that there was no evidence of mastic pointing (joint sealer) in the top of the roof plank joints, which would appear to be contrary to specification requirements.

B) Auditorium

Bituminous material dripping through precast concrete plank joints indicate that the joints were not properly pointed as required in the specifications. Visual examination indicated that some of the joints were pointed on the top side with mastic. At these locations no dripping of bituminous was evident.

An analysis of cores taken through the built-up roofing indicated that there were four (4) layers of felt.

Water was found in several areas on this roof indicating improper pitch to the drains.

Bolts were found omitted in three (3) locations in bridging to trusses in the auditorium roof slab due to the fact that the bolt holes of the bridging to truss connection were not aligned. The omission reduces safety factor trusses involved. This inspection was confined to the visible area accessible at the time of inspection.

C) Main Roof

Analysis of cores taken of this roof section indicated that the roof was not constructed according to plans. The lightweight concrete fill and screed coat were omitted. The roof was graded to the pitch required for drainage by increasing the thickness of the structural concrete slab instead of using lightweight concrete fill specified in Section 16 (Spec. 209). The above change in construction has increased the dead load of this roof slab by approximately 5%.

D) Portico

The roof of the portico over the main entrance is pitched away from drains, contrary to Dwg. Nos. 5 and 9. This results in water pouring over entrance way in heavy rain. This condition also causes the forming of icicles in the winter time as reported by the Custodian Engineer.

Four (4) aluminum (architectural) pipe columns shown on Dwg. No. 15 (2) were not installed.

IV. East West & South Exterior Walls around Gymnasium and Auditorium

The bond between the courses of brick above and below the horizontal line of weep holes approximately ten courses below the coping is broken. The brickwork above the line of weep holes has moved outward. It was noted that the bond between the coping and the brick was broken.

V. Pipe Enclosures

Holes were checked and they were found to be sleeved in accordance with the requirements of Section 7 of the specifications. An addendum stated that the voids between pipe and existing hole should be filled. During our inspection, it was noted that holes were not filled as required.

Room Nos. 222 and 224 have holes for steam pipes approximately 8" in diameter with a 4" pipe running through. The void between pipe and concrete slab was not filled. This condition existed in the three floors above at this same location and was also found to exist in pipe holes running horizontally from room to room.

VI. Pipe Hangers

In our inspection it was noted that hangers which suspend pipe and ducts, for steam and plumbing, from the ceiling were not installed at the spacing required in the specifications. It was noted that the hanger inserts were installed at required intervals. However, in many instances the metal hangers proper were omitted.

VII. Upper Fan Room

The louvers in the upper fan room were not sufficiently pointed around louver frame. Daylight can be seen in said areas, indicating a void between louver frame and masonry, resulting in improper weatherproofing. It was also noted that a course of brick was missing.

VIII. First Floor Spandrel Beams

Reinforcing steel (stirrups) were found to be rusting through the exterior indicating practically no concrete covering. Spec. No. 97 (c) requires a minimum of 1½" covering for reinforcing steel.

Reinforcing steel was required to be inspected and approved by an independent licensed professional engineer (see Par. 97A of specifications) before placement of concrete. An affidavit for this inspection was required to be furnished by the contractor.

IX. Room No. 319

The convector casing was removed showing one course of masonry missing; window frame has no support in top course of masonry as required. A course which normally would support and anchor the window frame was omitted. It was reported to us by Mr. Joseph Coyne, Custodian Engineer, that this and many other rooms facing east

require weatherproofing as rain enters through wall and window frames. It was also stated that the rooms with this condition are very hard to heat. Attached hereto is a photograph obtained from the Commission showing the condition described above.

The following are results of compression tests of concrete cores taken from sidewalk and entrance areas.

Core No.	Diameter Inches	Area Sq. Inches	Load Lbs.	P.S.I.	Corrected P.S.I.
1	4.0	12.56	57,800	4602	4325
2	4.0	12.56	81,100	6457	5983
3	4.0	12.56	80,000	6369	5817
4	4.0	12.56	83,700	6664	6631
5	4.0	12.56	64,300	5119	4895
6	4.0	12.56	100,200	7978	7100
7	4.0	12.56	89,800	7150	6530
8	4.0	12.56	98,800	7866	7351

The above test results indicate the concrete strengths reported comply with the specification requirements.

No. 2—P.S. #138, Bronx, N. Y.

I. Sidewalks

- A) Surface area near main entrance badly spalled and generally deteriorated.
- B) Provision for expansion has been omitted at various locations; irregular cracking has occurred particularly near the main entrance and in areaways.
- C) Differential settlements were noted up to approximately 2" in Entrance No. 3, 8 and 9. These were caused by poor compaction of fill in said areas.

II. Thickness of Sidewalk Concrete and Cinder Fill

The results of twenty-one cores taken at random throughout sidewalk area are as follows:

Core Number	Location	Depth of Concrete	Depth of Cinder Fill
1	Sidewalk at Main Entrance Area	4.0"	2.5"
2	Sidewalk at Main Entrance Area	4.0"	2.5"
3	Sidewalk at Main Entrance Area	4.5"	3.5"
4	Sidewalk at Main Entrance Area	4.5"	3.0"
5	Sidewalk Lafayette Ave.	3.75"	7.0"
6	Sidewalk Lafayette Ave.	4.125"	2.75"
7	Sidewalk Lafayette Ave.	3.875"	4.50"
8	Sidewalk Lafayette Ave.	4.125"	3.50"

Core Number	Location	Depth of Concrete	Depth of Cinder Fill
9	Sidewalk Lafayette Ave.	5.25"	5.50"
10	Sidewalk Lafayette Ave.	2.625"	7.50"
11	Sidewalk Lafayette Ave.	3.875"	4.50"
12	Sidewalk Lafayette Ave.	4.0"	6.0"
13	Sidewalk Lafayette Ave.	4.0"	4.0"
14	Sidewalk Entrance No.3	3.875"	3.25"
15	Sidewalk Entrance No. 3	4.125"	3.75"
16	Sidewalk Entrance No. 3	3.75"	2.50"
17	Sidewalk Entrance No. 3	3.375"	2.25"
18	Sidewalk Entrance Nos. 8 and 9	3.875"	0.25"
19	Sidewalk Entrance Nos. 8 and 9	4.375"	3.00"
20	Sidewalk Entrance Nos. 8 and 9	3.75"	3.75"
21	Sidewalk Entrance Nos. 8 and 9	4.875"	1.50"

The depth of sidewalk concrete required is: 4.0"

The depth of sidewalk cinder fill required is: 6.0"

Eighteen of the twenty-one core holes or 85% indicate that the depth of cinder fill is less than the 6" required. The absence of required depth of cinder fill will probably limit the useful life of the sidewalk.

The following are the results of compression tests of concrete cores taken from sidewalk and entrance areas.

Core No.	Diameter Inches	Area Sq. Inches	Load Lbs.	P.S.I.	Corrected P.S.I.
1	4.0	12.56	*	—	—
2	4.0	12.56	*	—	—
3	4.0	12.56	49,800	3965	3600
4	4.0	12.56	91,000	7245	6713
5	4.0	12.56	95,000	7564	6619
6	4.0	12.56	81,400	6481	5768
7	4.0	12.56	92,500	7365	6444
8	4.0	12.56	82,200	6545	5563
9	4.0	12.56	78,300	6234	5935
10	4.0	12.56	101,700	8097	5344
11	4.0	12.56	84,300	6712	5705
12	4.0	12.56	68,000	5414	4602
13	4.0	12.56	71,400	5685	4832
14	4.0	12.56	88,000	7006	5955
15	4.0	12.56	107,500	8559	7618
16	4.0	12.56	93,500	7444	6625
17	4.0	12.56	102,700	8177	6828
18	4.0	12.56	93,700	7460	6453
19	4.0	12.56	74,300	5916	5450
20	4.0	12.56	87,700	6982	5830
21	4.0	12.56	103,200	8217	6861

* It was not possible to test Core Nos. 1 and 2 as the concrete in these cores was of such poor quality at the time of drilling that they disintegrated during drilling operations.

The remaining test results indicate the concrete strengths reported comply with specification requirements.

III. Exterior Walls and Roof Parapet

- A) On the virgil place side of this building, it was noted that at both corners there were cracks originating at the top of the window trim extending downward diagonally to the building corners. The cracks, approximately 12 feet in length follow the mortar joints for the most part and appear to be about one half inch wide adjacent to the windows and tapering to a hairline crack at corners.

At the westerly corner on the Lafayette Ave. Side, there is a crack approximately 10 feet long extending horizontally from the top of terra cotta window trim to a point approximately 1 foot below the bottom of the expansion joint and thence diagonally downward to the building corner.

At the easterly corner on Lafayette Ave., a crack between the 15th \pm and 16th \pm courses extends from the building corner westerly to a point about 18" from the first full window and then downward to the terra cotta trim, and to the south approx. 10 feet.

A loose brick near last said window has already been removed.

- B) One of the expansion joints in the parapet wall on the Lafayette Ave. Side was apparently omitted on the contract drawing (Dwg. No. 7) and in the construction.

Detail on Dwg. 2A shows expansion joint extending from top brick to top of architectural terra cotta over the windows (through 17 courses of brick). In only one case was this done. The rest of the joints (10 in number) terminate from 2 to 4 courses above the level indicated on the drawings and therefore do not comply with the requirements of the approved drawings.

The failure to extend the expansion joints the full 17 courses as required by the plans may have induced expansion and contraction stresses in the masonry in the vicinity of the above mentioned cracks.

IV. Warpage of Doors

In all of the following rooms, checked doors were found to have a warpage of from $\frac{1}{4}$ " to $\frac{1}{2}$ " out of plane.

In order to open and close doors, pressure had to be applied.

<u>Room No.</u>	<u>Location of Warpage</u>
106	Upper right hand corner
113	Warped vertically
104	Lower right hand corner
102	Upper left hand corner
122	Upper left hand corner
118	Upper left hand corner
115	Lower left hand corner
202	Center of door
203	Upper right hand corner
204	Center of door
206	Upper left hand corner
209	Upper left hand corner
216	Upper left hand corner
218	Center of door
219	Center of door
223	Center of door
323	Center of door
319	Upper left hand corner
320	Upper left hand corner
315	Center of door
318	Upper left hand corner
305	Upper left hand corner
303	Upper left hand corner

V. Seepage in Basement

Seepage occurs at the junction of the floor slab and the foundation wall defining the interior line of duct space under the gymnasium wing. The winter seepage was in evidence during our tour of inspection.

This condition could have been avoided if a water stop had been installed at junction of foundation wall and floor slab.

* * *

This report covers inspection of the schools indicated. The inspection was carried out as instructed by the Commission. A major portion of the field inspection was carried out in the presence of a representative of the Commission. All laboratory tests were performed in accordance with applicable A.S.T.M. requirements.

Respectfully submitted,
ROBERT W. HUNT COMPANY
 V. J. Carpentieri
 Laboratory Mgr., N. Y. District

VJC:lr

APPENDIX E

MESSAGE OF GOVERNOR NELSON E. ROCKEFELLER
TO LEGISLATURE OF THE
STATE OF NEW YORK

August 21, 1961

TO THE LEGISLATURE (in Extraordinary Session):

At the request of the State Commissioner of Education, acting with the full endorsement of the Board of Regents, I have convened this Extraordinary Session pursuant to the provisions of Article IV, Section 3, of the Constitution. I recommend for your consideration legislation introduced at their request pertaining to the structure, management, supervision and control of educational affairs for the city school district of the City of New York.

This emergency Session is occasioned by the failure of local City officials to deal effectively with public school administration in New York City and a consequent loss of public confidence.

This condition requires immediate legislative action to assure a first-rate public school system for New York City's 1,000,000 students—approximately one-third of all the public school pupils in the State.

As the Commissioner of Education stated on August 12th when he asked me to convene this Extraordinary Session:

"This is a time of crisis for the schools of the City and there can be no further delay in dealing with this crisis."

The crisis in New York City's public schools stems from the reluctance of City leadership to assume its responsibilities and take decisive action. Specific corrective measures have been as consistently ignored as they have been consistently recommended.

In 1959, Mayor Wagner's City Administrator, Charles F. Preusse, undertook a study of school planning, construction and financing on behalf of the Board of Education. At the request of Dr. James E. Allen, Jr., Commissioner of Education, a committee, headed by Dr. Henry T. Heald, made an inquiry into charges by the City Comptroller of waste and extravagance in new school construction.

Both the Preusse and Heald committees made a series of specific criticisms and specific recommendations related to these subjects.

These recommendations were virtually ignored.

Conditions continued to deteriorate. The event which brought the present crisis to a head, however, was the revelations developed by the State Commission of Investigation at public hearings in June of this year.

These findings disclosed serious deficiencies in the administration of the school construction program with resulting waste of public funds, inefficiency, poor administration and corruption—all presenting serious hazards to the health, safety and proper instruction of the children of New York City.

The State Commission of Investigation also uncovered the practice of special payment by private contractors to school custodians as well as other questionable practices in school administration.

Based upon the evidence, the Commission called for corrective action in these words:

“Many millions of dollars have been spent and many more millions of tax dollars will be spent in the future on school construction. It is imperative for economy in the already over-burdened government of the City and for the health, safety and proper education of New York’s children that future construction programs be administered effectively and efficiently, under competent leadership, in a climate free from political interference and corrupt practices.

“It is quite apparent from the evidence presented here that this will not be the case unless those responsible recognize the compelling need for corrective action.

“The Commission’s purpose in this hearing has been to expose abuses uncovered by our investigation and demonstrate in an objective and constructive manner that basic and sweeping reform is required.

“Nothing short of a complete revitalization of the entire Board and its staff will provide the people of the City of New York with the type of school administration to which they are entitled.”

In the face of continuing drift and failure to take corrective action, the State Commissioner of Education met with members of the New York City Board of Education on July 20th.

At that meeting, Commissioner Allen expressed his concern as to the damaging effect on the wellbeing of the school children and the morale of the teachers in the public school system of New York City of the conditions which had been the subject of investigations and reports, and urged prompt Board action.

Following this meeting, Commissioner Allen addressed a letter to the members of the New York City Board of Education setting forth his specific recommendations for immediate corrective action.

But still there was no decisive action by local authorities. Therefore on August 11, Commissioner Allen again wrote a letter to the Board of Education in which he stated:

"The school district of the City of New York includes more than a million children. . . . It includes nearly 40,000 able and dedicated teachers and 800 schools, some of the finest in the world. We cannot wait longer to give these children the opportunity they deserve. We cannot wait longer to give these teachers the material and moral support they must have if they are to raise the quality of teaching and learning to the level which the times demand. We cannot wait longer to make all schools in the city as good as those we consider the best.

"Action to correct the fundamental structural weaknesses of the school system can no longer be postponed. The correction of these structural weaknesses requires state legislative action.

"Therefore, the (State Department of Education) is taking steps at once to draft appropriate legislation for the consideration of the Governor and the Legislature . . ."

At this juncture, the Mayor proposed another study.

In declining the Mayor's invitation to join in sponsoring this third study in three years, I pointed out:

"This is clearly a time for action—not further study."

I therefore asked Commissioner Allen for his recommendations for appropriate State action.

The Commissioner responded with the request that I convene this Extraordinary Session and outlined his broad objectives for corrective legislation. In the interim, these have been developed by the Commissioner, with full approval of the Regents, into specific legislative proposals that are now before you.

The bill introduced at their request provides:

1. That the present Board of Education be superseded by a new Board on the 30th day following enactment.
2. That a permanent panel of eleven, consisting of the heads of leading educational, legal, labor, industrial and civic organizations in New York City, be created to nominate candidates of outstanding quality for the Board of Education.
3. That the Chancellor of the Board of Regents convene the first meeting of the panel to select at least 18 nominees from which

the nine new members of the Board of Education will be appointed by the Mayor of the City of New York.

4. That the power to appoint local school boards within the City of New York be transferred from the borough presidents to the new Board of Education, with the Board required to consult neighborhood groups and other local groups interested in education in selecting its appointees.

5. That the new Board of Education be given emergency powers for nine months to assure ample authority to deal with the emergency situation.

6. That the Board of Education be required to make progress reports to the Regents and the Commissioner of Education and to the Mayor on January 1 and April 1 with a final report on July 1, with respect to the following:

- Corrective action on school construction, school maintenance and repair, and on school administration and management;
- Disciplinary action with respect to employees guilty of accepting gratuities in relation to the performance of their duties, and the corrective action taken by the Board of Education to prevent recurrences of such misconduct;
- Steps to evaluate and improve the quality of instruction;
- Plans for a long-range, coordinated school building program;
- Plans for revitalized local school boards and greater citizen participation in the affairs of neighborhood schools.

7. That the Board of Regents and the State Commissioner of Education prepare specific legislative recommendations for other permanent changes in the Education Law for the improvement of the organization and administration of the New York City school system.

The Legislature has before it today a major responsibility affecting the lives and future opportunities of almost 1,000,000 children now attending the public schools of New York City—to say nothing of the millions that will follow them.

We also have a tremendous responsibility to 40,000 dedicated men and women who are devoting their lives to the teaching of these young people.

Our children are our most priceless resource. The future of our State and the Nation depends importantly upon the opportunities received by our youth.

Providing the best possible education for the youth of America is a sacred responsibility.

To meet this responsibility with respect to the City of New York, I urge your Honorable Bodies to enact promptly the measure now before you as introduced at the request of the Board of Regents and the Commissioner of Education.

(Signed) Nelson A. Rockefeller

APPENDIX F

LEGISLATION ENACTED BY NEW YORK STATE LEGISLATURE IN EXTRAORDINARY SESSION*

August 21, 1961

STATE OF NEW YORK IN SENATE

Extraordinary Session

August 21, 1961

AN ACT

To amend the education law, in relation to reconstituting the board of education for the city school district of the city of New York, providing for the emergency supervision of such district, and making appropriations in relation thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The conditions existing in the school system of the city of New York have shaken public confidence, cause the legislature grave concern and call for prompt corrective action. These conditions include

- irregularities in the school construction program
- serious hazards in school buildings due to inadequate maintenance and improper repairs
- instances of corruption among employees
- staggering administrative complexities and needless red tape.

The commissioner of education has warned that this is a time of crisis for the New York city schools and has urged prompt corrective action. The educational well-being of almost one million children is directly affected.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

* Chapter 971, Laws of 1961.

§ 2. Notwithstanding any other provision of law, on the effective date of this section, the terms of office of the persons then comprising the membership of the board of education of the city school district of the city of New York shall terminate.

§ 3. Notwithstanding the provisions of subdivision two of section twenty-five hundred fifty-three of the education law, as added by section five of this act, the members of the board of education of the city school district of the city of New York shall be appointed to fill the vacancies occurring on the effective date of section two of this act in the manner prescribed by this section.

Within five days after the effective date of this act, the board of regents shall request the following persons to convene with the chancellor of the board of regents as a selection board for the purpose of submitting the names of nominees to the mayor of the city of New York to fill such vacancies:

- the president of Columbia University;
- the chancellor of the City University of New York;
- the president of New York University;
- the president of the Association of the Bar of the City of New York;
- the president of the New York City Central Trades and Labor Council;
- the president of Commerce and Industry Association of New York, Inc.;
- the president of the Public Education Association;
- the president of the United Parents Associations of New York City, Inc.;
- the president of the League of Women Voters of the City of New York;
- the president of Citizens Union; and
- the president of the Citizens Budget Commission, Inc.

To constitute a quorum, it shall be necessary for at least seven of the persons specified to attend. The chancellor of the board of regents shall be the chairman of such selection board, but he shall not participate in the final selection of the nominees. In the event that the chancellor of the board of regents shall be unable to act, the vice-chancellor of the board of regents shall act in his place.

The selection board shall receive and take into consideration in making its nominations recommendations from representative asso-

ciations, civic, educational, business, labor and professional groups active or interested in the field of education.

At least five days before the effective date of section two of this act, the selection board shall submit a list to the mayor of at least eighteen names of nominees who, in the judgment of the selection board, are persons of outstanding experience, competence and qualification for service on the board of education. On the effective date of section two of this act, the mayor shall appoint nine persons from among the nominees to be the members of the board of education of the city school district of the city of New York. If the mayor shall fail to make such appointments on the effective date of section two of this act, the state commissioner of education may make such appointments in his place from among the nominees submitted to the mayor.

If the selection board shall submit less than eighteen names of nominees to the mayor five days before the effective date of section two of this act, the mayor shall be required to fill from the names submitted that number of vacancies equal to one-half the number of names submitted disregarding resulting fractions and the mayor may fill any remaining vacancies on the effective date of section two of this act without regard to the provisions of this section.

Notwithstanding any other provision of law the terms of office of the members of the board of education appointed on the effective date of section two of this act shall be as follows: the terms of office of two members shall expire on the first Tuesday in May, nineteen hundred sixty-two, the terms of office of two members shall expire on the first Tuesday in May, nineteen hundred sixty-three, and the terms of office of the remaining members of the board appointed on the effective date of section two of this act shall expire on the first Tuesday of May in nineteen hundred sixty-four, nineteen hundred sixty-five, nineteen hundred sixty-six, nineteen hundred sixty-seven and nineteen hundred sixty-eight, respectively. Each of their successors shall be appointed in the manner specified by the provisions of subdivision two of section twenty-five hundred fifty-three of the education law as added by section five of this act and shall hold office for a term of seven years expiring on the first Tuesday in May, except that in the event of a vacancy occurring other than by expiration of term, the successor shall hold office for the unexpired term.

§ 4. Subdivision one of section twenty-five hundred fifty-three of the education law, as last renumbered and amended by chapter

seven hundred sixty-two of the laws of nineteen hundred fifty, is hereby amended to read as follows:

1. No person shall be eligible to the office of member of a board of education who is not a citizen of the United States and who, *in the case of the city school districts of the cities of Buffalo, Rochester, Syracuse, Yonkers and Albany*, has not been a resident of the city school district for which he is chosen for a period of at least three years immediately preceding the date of his election or appointment and who, *in the case of the city school district of the city of New York*, is not a resident thereof on the date of his appointment.

§ 5. Subdivision two of section twenty-five hundred fifty-three of such law, as last amended by chapter two hundred eighty-nine of the laws of nineteen hundred sixty-one, is hereby repealed and a new subdivision two is inserted in lieu thereof, to read as follows:

2. *The members of the board of education of the city school district of the city of New York shall be appointed in the manner prescribed by this subdivision.*

At least twenty-five days prior to the expiration of the term of office of any member, or within ten days after the occurrence of a vacancy otherwise than by expiration of term, the mayor of the city of New York shall request the following persons to convene as a selection board for the purpose of submitting the names of nominees to him for appointment to the board of education:

the president of Columbia University;
the chancellor of the City University of New York;
the president of New York University;
the president of the Association of the Bar of the City of New York;
the president of the New York City Central Trades and Labor Council;
the president of Commerce and Industry Association of New York, Inc.;
the president of the Public Education Association;
the president of the United Parents Associations of New York City, Inc.;
the president of the League of Women Voters of the City of New York;
the president of Citizens Union; and
the president of the Citizens Budget Commission, Inc.

To constitute a quorum, it shall be necessary for at least seven of the persons specified to attend. The president of the Association of the Bar of the City of New York shall be the chairman of the selection board and shall, forthwith upon receiving the request of the mayor, give notice to the others specified of the time and place of convening. In the event that the president of the Association of the Bar of the City of New York shall be unable to act, the mayor shall designate one of the other persons specified to convene the selection board and to be its chairman.

The selection board shall receive and take into consideration in making its nominations recommendations from representative associations, civic, educational, business, labor and professional groups active or interested in the field of education.

Within fifteen days after the mayor shall have requested a convening of the selection board, it shall nominate to the mayor for each vacancy three to five persons who, in the judgment of the selection board, are persons of outstanding experience, competence and qualification for service on the board of education. Within ten days after receiving such nominations, the mayor shall appoint from among the nominees one person to fill each vacancy.

In the event the selection board shall fail to submit its nominations to the mayor within fifteen days after the mayor shall have requested its convening, the mayor may fill a vacancy without regard to the provisions of this subdivision.

§ 6. Subdivisions two and three of section twenty-five hundred sixty-four of such law, such section having been so renumbered by chapter seven hundred sixty-two of the laws of nineteen hundred fifty, and subdivision five of such section, as last amended by chapter six hundred thirty-nine of the laws of nineteen hundred sixty-one, are hereby amended to read, respectively as follows:

2. There shall be in each of such districts a local school board of five members appointed by the [president of the borough in which such district is located] board of education in such city. The board of education shall give at least thirty days notice of its intention to make such appointment or to fill such vacancy as may occur which shall be published in the same manner as notice of public hearings provided that such notice need not contain the name of any prospective appointee. The board of education shall take into consideration in making such appointment the recommendations made to it by community and neighborhood groups active in the local school board district and by representative associations,

civic, educational, business, labor and professional groups active or interested in the field of education. The board of education shall designate as a member of a local school board one member of the board of education and the city superintendent of schools shall assign one assistant superintendent to advise with such board.

3. The term of office of a member of such board shall be five years. A vacancy on such board shall be filled by the [borough president] board of education for the unexpired term.

5. A member of a local school board who publicly declares that he will not accept or serve in the office of member of such board, or refuses or neglects to attend three successive meetings of such board, of which he is duly notified, without rendering a good and valid excuse therefor in writing to the chairman or secretary of such board, vacates his office by refusal to serve. It shall be the duty of the remaining members of the local school board to determine by a majority vote whether the excuse is a good and valid one. If they find that the excuse is not a good and valid one, they shall declare said office vacant and shall forthwith notify the board of education [and the borough president] of such vacancy. Thereafter such vacancy shall be filled by the [borough president. If the borough president neglects at any time to fill any vacancy on the school board within ninety days after he has been notified of such vacancy, then the mayor shall be empowered to fill such vacancy] board of education.

§ 7. Such law is hereby amended by adding thereto a new section, to be section twenty-five hundred fifty-four-a, to read as follows:

§ 2554-a. *Special provisions relating to the city school district of the city of New York during emergency period.* 1. *As used in this section, the term "emergency period" shall mean the period from the effective date of this section to the first day of July, nineteen hundred sixty-two.*

2. *In order to place the educational affairs of the city school district of the city of New York under the closer supervision of the regents and the commissioner during the emergency period, the board of education of such district shall submit to the regents and the commissioner and to the mayor of the city of New York on the first day of January and April, nineteen hundred sixty-two, an interim progress report in such form and detail as the commissioner shall prescribe and on the first day of July, nineteen*

hundred sixty-two, a final report in such form and detail as the commissioner shall prescribe as to:

a. the corrective action taken in the emergency period and planned by the board of education with respect to the administration of the program for new school building construction;

b. the corrective action taken in the emergency period and planned by the board of education with respect to the repair and maintenance of existing school buildings and other structures under the control of the school district;

c. the disciplinary action taken in the emergency period with respect to employees guilty of accepting gratuities in relation to the performance of their duties, and the corrective action taken by the board of education to prevent recurrences of such misconduct;

d. the corrective action taken in the emergency period and planned by the board of education with respect to administrative reform and the development of a program for the division of responsibility between the board and the superintendent of schools and the administrative staff for the more efficient and effective management of the district;

e. the plans developed and action taken in the emergency period by the board of education for the revitalization of local school boards and for increased participation of residents throughout the city of New York in the affairs of their local neighborhood schools;

f. the plans developed and action taken in the emergency period by the board of education to establish a long-range program and the necessary staff organization for better informed and coordinated planning of new school construction and the modernization of existing structures; and

g. the steps taken in the emergency period by the board of education to evaluate and to improve the quality of instruction in the schools.

3. During the emergency period, the board of education of the city school district of the city of New York shall have, specifically, the power:

a. To undertake any studies, inquiries, surveys or analyses it may deem relevant through the personnel of the district or in cooperation with or by agreement with any other public or private agency;

b. To employ and at pleasure remove educational, engineering, architectural, legal or management consultants and such other

assistants as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation therefor;

c. Notwithstanding the provisions of subdivision one of section twenty-five hundred sixty-five of this chapter, to remove at its pleasure by a vote of a majority of all its members, the superintendent, any deputy superintendent or any associate superintendent of schools of the district irrespective of the date of their appointments, provided, however, that the board may enter into a contract with the superintendent of schools for a period of not less than three and not more than five years; and

d. To authorize the superintendent of schools and the administrative staff of the district by by-law, rule, regulation or resolution to exercise on its behalf such of its administrative and ministerial powers and duties with respect to the administration of the city school district, the purchase, repair, remodeling, improvement or enlargement of school buildings or other buildings or sites and the construction of new buildings as the board deems necessary or desirable for the more efficient administration of the district or for the more expeditious completion of school construction, maintenance or repairs, provided, however, that the board shall not authorize the superintendent of schools and the administrative staff to exercise any powers and duties relating to its investigative or judicial functions.

§ 8. Not later than the first day of February, nineteen hundred sixty-two, the state board of regents and the state commissioner of education shall submit to the governor and the legislature specific recommendations for such permanent changes in the laws of the state as they may deem advisable for the organization and more effective administration of the city school district of the city of New York, including, but not limited to, recommendations as to:

a. The powers necessary to ensure the board of education complete freedom to operate for the best interests of the schools unhampered by restrictive influence and controls.

b. The revitalization of the present system of local school boards in such city school district.

c. The effective participation by the people throughout the city of New York in the government of their local schools.

d. The delineation of functions and responsibilities between members of the board of education and the superintendent of schools and the administrative staff of such city school district.

e. The interrelationship of such city school district and its board of education with official agencies of the city of New York.

f. The construction, maintenance, operation and repair of school buildings and other buildings under the control of such city school district.

§ 9. The sum of one hundred fifty thousand dollars (\$150,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the local assistance fund, not otherwise appropriated, and shall be available for the state fiscal year ending March thirty-first, nineteen hundred sixty-two, to the state education department for the use of the board of education of the city school district of the city of New York for its expenses, including personal service, in carrying out the reporting provisions of this act, in employing consultants or in undertaking studies, inquiries, surveys or analyses in relation thereto. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the chairman or president of such board of education and by the state commissioner of education.

§ 10. The sum of twenty-five thousand dollars (\$25,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the local assistance fund, not otherwise appropriated, and shall be available for the state fiscal year ending March thirty-first, nineteen hundred sixty-two, to the state education department for the purpose of enabling the state board of regents and the state commissioner of education to carry out the provisions of section eight of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved as provided by law.

§ 11. This act shall take effect immediately, except that sections two, six and seven shall take effect the thirtieth day following the date of enactment of this act.

(NOTE: Subdivision 2 of Section 2553 of the Education Law, repealed by this act, provides for the appointment of members of the board of education of the city school district of the city of New York by the mayor of said city. Such provisions will be superseded on the effective date of this act by new Subdivision 2 of Section 2553.)

NOTE: This bill was prepared at the direction of the State Department of Education and introduced at its request.

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